

Message

---

**Sent:** 4/24/2018 3:03:04 PM  
**To:** Westlake, Kenneth [westlake.kenneth@epa.gov]; Forren, John [Forren.John@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Walsh-Rogalski, William [Walshrogalski.William@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]; Young, Brenda [young.brenda@epa.gov]; Gentile, Laura [Gentile.Laura@epa.gov]  
**Subject:** RE: Proposed agenda for NEPA managers meeting in Chicago  
**Attachments:** Proposed agenda for NEPA managers meeting in Chicago

All –

In light of the signing of the One Federal Decision MOU, and changing expectations surrounding timelines associated with the projects we are reviewing, I suggest altering the agenda slightly to include this as a specific topic. switching the section discussing My initial feedback is concerning the following two sections:

## Ex. 5 Deliberative Process (DP)

\*\*\*\*\*

Connell Dunning  
Environmental Review Section (ENF 4-2)

US EPA Region IX, Pacific Southwest  
75 Hawthorne St, SF CA 94105  
dunning.connell@epa.gov  
phone - 415-947-4161

*Pollinators, including bees, butterflies, birds, and bats, are an important part of our ecosystem and food supply chain. Plants, like fruits and vegetables, need bees and other pollinators to help them grow.*

Find out how EPA is protecting pollinators: <https://www.epa.gov/pollinator-protection>

---

**From:** Westlake, Kenneth

**Sent:** Friday, April 06, 2018 5:02 PM

**To:** Dunning, Connell <Dunning.Connell@epa.gov>; Forren, John <Forren.John@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Walsh-Rogalski, William <Walshrogalski.William@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>; Young, Brenda <young.brenda@epa.gov>; Gentile, Laura <Gentile.Laura@epa.gov>

**Subject:** Proposed agenda for NEPA managers meeting in Chicago

Fellow NEPA managers,

Here is our first attempt to allocation time to the many topics you have suggested for our May 1-2 meeting in Chicago. A huge thanks to Jill Nogi for her collaboration on this agenda. Because Kelly is out until Monday, 4/16 and we will have our bi-weekly call with her on Thursday, 4/19, **I am asking for your feedback on this version of the agenda no later than COB Tuesday, 4/17. Please copy Jill on your feedback.** We can discuss your feedback on the 4/19 call.

Jill and I are interested in your thoughts on the topic order and the amount of time allocated to the proposed topics. Also, if you have any additional topics to propose, let us know.

I am looking forward to a productive and enjoyable time with all of you.

Ken

312-886-2910



Message

---

**Sent:** 1/29/2018 5:44:19 PM  
**To:** Nogi, Jill [nogi.jill@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]; Walsh-Rogalski, William [Walshrogalski.William@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Forren, John [Forren.John@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Westlake, Kenneth [westlake.kenneth@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]  
**Subject:** White House plan to streamline federal permitting released today

Released today in advance of the state of the union address.  
This includes the language to eliminate NEPA 309 review.  
Connell

\*\*\*\*\*

Connell Dunning  
Environmental Review Section (ENF 4-2)  
US EPA Region IX, Pacific Southwest  
75 Hawthorne St, SF CA 94105  
dunning.connell@epa.gov  
phone - 415-947-4161

*Pollinators, including bees, butterflies, birds, and bats, are an important part of our ecosystem and food supply chain. Plants, like fruits and vegetables, need bees and other pollinators to help them grow.*

Find out how EPA is protecting pollinators: <https://www.epa.gov/pollinator-protection>

---

**From:** Nogi, Jill  
**Sent:** Friday, January 26, 2018 1:45 PM  
**To:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>  
**Cc:** Walsh-Rogalski, William <Walshrogalski.William@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Forren, John <Forren.John@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>  
**Subject:** RE: Draft slides

Here's some of our thoughts for your consideration:

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Thanks Kelly! Jill

**From:** Goforth, Kathleen

**Sent:** Friday, January 26, 2018 12:06 PM

**To:** Knight, Kelly <knight.kelly@epa.gov>

**Cc:** Walsh-Rogalski, William <Walshrogalski.William@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Forren, John <Forren.John@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>

**Subject:** Re: Draft slides

Kelly -

Thanks for sharing your draft. I support Bill's and Ken's suggestions.

**Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

-Kathy

Sent from my iPhone

On Jan 26, 2018, at 7:47 AM, Knight, Kelly <knight.kelly@epa.gov> wrote:

All,

I'll probably send these slides to Drew by COB today. Let me know if you have any major heartburn.

Thanks

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)  
**Ex. 6 Personal Privacy (PP)** (cell)

<Draft Slides - Policy and Procedures Manual (1-25-17).pptx>

Message

---

**From:** Dunning.Connell@epa.gov [Dunning.Connell@epa.gov]  
**Sent:** 8/9/2019 2:11:12 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** Fwd: PDF of All Survey Responses  
**Attachments:** NEPA 309 Survey Responses 9\_21\_2017.pdf; ATT00001.htm

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

Begin forwarded message:

**From:** "Knight, Kelly" <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>  
**Date:** September 21, 2017 at 1:10:48 PM CDT  
**To:** "Timmermann, Timothy" <[Timmermann.Timothy@epa.gov](mailto:Timmermann.Timothy@epa.gov)>, "Walsh-Rogalski, William" <[Walshrogalski.William@epa.gov](mailto:Walshrogalski.William@epa.gov)>, "Musumeci, Grace" <[Musumeci.Grace@epa.gov](mailto:Musumeci.Grace@epa.gov)>, "Mitchell, Judy-Ann" <[Mitchell.Judy-Ann@epa.gov](mailto:Mitchell.Judy-Ann@epa.gov)>, "Lapp, Jeffrey" <[lapp.jeffrey@epa.gov](mailto:lapp.jeffrey@epa.gov)>, "Militscher, Chris" <[Militscher.Chris@epa.gov](mailto:Militscher.Chris@epa.gov)>, "Westlake, Kenneth" <[westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov)>, "Houston, Robert" <[Houston.Robert@epa.gov](mailto:Houston.Robert@epa.gov)>, "Tapp, Joshua" <[Tapp.Joshua@epa.gov](mailto:Tapp.Joshua@epa.gov)>, "Strobel, Philip" <[Strobel.Philip@epa.gov](mailto:Strobel.Philip@epa.gov)>, "Schuller, Jennifer" <[Schuller.Jennifer@epa.gov](mailto:Schuller.Jennifer@epa.gov)>, "Goforth, Kathleen" <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>, "Dunning, Connell" <[Dunning.Connell@epa.gov](mailto:Dunning.Connell@epa.gov)>, "Moutoux, Nicole" <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>, "Nogi, Jill" <[nogi.jill@epa.gov](mailto:nogi.jill@epa.gov)>  
**Cc:** "Trice, Jessica" <[Trice.Jessica@epa.gov](mailto:Trice.Jessica@epa.gov)>, "Suriano, Elaine" <[Suriano.Elaine@epa.gov](mailto:Suriano.Elaine@epa.gov)>, "Rountree, Marthea" <[Rountree.Marthea@epa.gov](mailto:Rountree.Marthea@epa.gov)>, "Wright, Justin" <[wright.justin@epa.gov](mailto:wright.justin@epa.gov)>, "Schaedle, Candi" <[Schaedle.Candi@epa.gov](mailto:Schaedle.Candi@epa.gov)>  
**Subject:** FW: PDF of All Survey Responses

As promised, here are the survey responses.

Thanks

Message

---

**From:** Dunning.Connell@epa.gov [Dunning.Connell@epa.gov]  
**Sent:** 8/9/2019 2:11:01 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** Fwd: Final Survey Report and Appendix  
**Attachments:** Survey Report (draft Final) 8\_2\_18.docx; ATT00001.htm; Survey Report Appendix (draft Final) 8\_2\_18.docx; ATT00002.htm

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

Begin forwarded message:

**From:** "Knight, Kelly" <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>  
**Date:** August 7, 2018 at 6:16:16 AM CDT  
**To:** "Timmermann, Timothy" <[Timmermann.Timothy@epa.gov](mailto:Timmermann.Timothy@epa.gov)>, "Musumeci, Grace" <[Musumeci.Grace@epa.gov](mailto:Musumeci.Grace@epa.gov)>, "Mitchell, Judy-Ann" <[Mitchell.Judy-Ann@epa.gov](mailto:Mitchell.Judy-Ann@epa.gov)>, "Lapp, Jeffrey" <[lapp.jeffrey@epa.gov](mailto:lapp.jeffrey@epa.gov)>, "Rudnick, Barbara" <[Rudnick.Barbara@epa.gov](mailto:Rudnick.Barbara@epa.gov)>, "Militscher, Chris" <[Militscher.Chris@epa.gov](mailto:Militscher.Chris@epa.gov)>, "Westlake, Kenneth" <[westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov)>, "Tapp, Joshua" <[Tapp.Joshua@epa.gov](mailto:Tapp.Joshua@epa.gov)>, "Strobel, Philip" <[Strobel.Philip@epa.gov](mailto:Strobel.Philip@epa.gov)>, "Schuller, Jennifer" <[Schuller.Jennifer@epa.gov](mailto:Schuller.Jennifer@epa.gov)>, "Goforth, Kathleen" <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>, "Dunning, Connell" <[Dunning.Connell@epa.gov](mailto:Dunning.Connell@epa.gov)>, "Nogi, Jill" <[nogi.jill@epa.gov](mailto:nogi.jill@epa.gov)>  
**Subject:** Final Survey Report and Appendix

Good Morning --

At long last -- attached is the draft final survey report and appendix. Many of the comments received through the survey have already been addressed with the letter writing memo and our increased emphasis on early engagement. If you identify other actions we should be taking, or significant required revisions, please let me know.

Happy to discuss during our call on Thursday.

Thanks

# PROGRAM ASSESSMENT OF EARLY INVOLVEMENT AND COLLABORATION IN THE EPA NEPA 309 REVIEW PROCESS

Prepared at the request of:

ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF FEDERAL ACTIVITIES  
WASHINGTON, D.C.

Conducted by:

U.S. INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION  
130 SOUTH SCOTT AVENUE  
TUCSON, ARIZONA 85701

Assessment Team:

SARAH PALMER, SR. PROGRAM MANAGER  
GAIL BROOKS, PROGRAM ASSOCIATE  
PATRICIA LEWIS, PROGRAM ASSISTANT

With support from:

ENVIRONMENTAL PROTECTION AGENCY  
CONFLICT PREVENTION AND RESOLUTION CENTER  
WASHINGTON, D.C.

U.S. Institute for



**Environmental Conflict Resolution**

Morris K. Udall Foundation

## TABLE OF CONTENTS

<b>I. Introduction.....</b>	<b>4</b>
<b>II. The Assessment .....</b>	<b>5</b>
Who Conducted the Assessment?.....	5
What was the Assessment Methodology? .....	6
<b>III. Analysis and Findings.....</b>	<b>7</b>
Early Involvement/Collaboration .....	7
Early Involvement .....	7
Collaboration.....	8
Relationships/Communication.....	9
Missions and Authorities.....	11
Roles and Responsibilities .....	12
EPA Cooperating Agency and 309 Review Roles .....	12
Expectations and Perceptions Regarding EPA's 309 Review Role and linkage to EPA's Mission .....	13
Additional Factors that Shape Opportunities for Early Involvement and Collaboration in the NEPA Review Process .....	14
Perceptions of Reviews and Comments .....	14
Perspectives about the Ratings.....	15
Adequacy of Resources Time/Staff/Funds .....	15
Internal Processes .....	16



<b>IV. Recommendations .....</b>	<b>16</b>
Recommendations to Foster Meaningful Early Involvement and Collaboration in the NEPA Review Process .....	17
Clarifying Early Involvement and Collaboration in the Context of NEPA 309 Review.....	17
Resource Materials to Further Understanding of the Principles of Effective Collaboration.....	17
Tools to Determine What Projects are Appropriate for Active Early Involvement and/or Collaboration.....	18
Memoranda of Understanding/Agreement .....	18
Cultivating the Current Shared Learning Environment .....	19
When to Use Third Party Neutrals .....	21
Organizational Commitment and Leadership .....	21
Recommendations to Enhance the Current Review Process .....	21
Workload, Staffing and Funding.....	21
Policies and Procedures.....	22
<b>V. Acknowledgments and Next Steps.....</b>	<b>22</b>
<b>VI. Resources .....</b>	<b>24</b>
<b>Appendix A: Interview Questions .....</b>	<b>A-1</b>
<b>Appendix B: Agencies Interviewed.....</b>	<b>B-1</b>
<b>Appendix C: Example Memoranda of Agreement.....</b>	<b>C-1</b>

## I. INTRODUCTION

The National Environmental Policy Act (NEPA) provides an interdisciplinary framework for environmental planning by federal agencies. It requires that federal agencies consider the environmental impacts of their proposed actions and reasonable alternatives to those actions in their decision-making processes. To meet this requirement, federal agencies prepare a detailed statement known as an Environmental Impact Statement (EIS).

The U.S. Environmental Protection Agency (EPA) has general statutory authority under NEPA and the Council on Environmental Quality's (CEQ) implementing regulations to review and comment on federal actions affecting the environment. Section 309 of the Clean Air Act, as amended (42 USC 7609)<sup>1</sup>, requires EPA to review and publicly comment on the environmental impacts of major federal actions, including actions requiring Draft and Final EISs, and proposed environmental regulations.

Section 309 confers broad review responsibilities on EPA for both the adequacy of the analysis and the environmental impacts of proposed federal actions. The NEPA Compliance Division in the Office of Federal Activities (OFA) coordinates EPA's NEPA review program. Each EPA regional office has the responsibility for carrying out the Section 309 Review for proposed federal actions affecting its region. EPA has developed a rating system to characterize the review of Draft EISs, and those ratings are included in the EPA comment letter to the lead agency. Regional reviewers work with the lead agency to resolve any issues in the Draft EIS. Where issues cannot be resolved and the impacts are "unsatisfactory from the standpoint of public health or welfare or environmental quality," the EPA Administrator will refer the Final EIS to CEQ.

OFA is interested in participating early and collaboratively in the NEPA compliance efforts of other federal agencies to the fullest extent practicable. OFA recognizes the benefit of using collaborative approaches in the NEPA review process with proposing federal agencies. Efforts aimed at supporting relationships between EPA and agencies subject to NEPA review are seen as beneficial in fostering earlier and more collaborative interaction on potentially controversial federal projects.

---

<sup>1</sup> July 14, 1955, c 360, §309, as added Dec. 31, 1970, Public Law 91-604 § 12(a) 42 U.S.C. § 7609 (1970).

## II. THE ASSESSMENT

In the fall of 2005, the EPA Office of Federal Activities asked the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to conduct a program assessment to learn how EPA reviewers and federal agencies currently work together and solve problems that arise in the course of NEPA environmental review. The program assessment was coordinated through the EPA Conflict Prevention and Resolution Center (CPRC).

The goal of the assessment is to:

- identify opportunities within the current NEPA Environmental Review Process to advance earlier and more collaborative approaches among federal partners at all levels of coordination (regional and national), and;
- recommend what steps could be taken to enhance earlier and more collaborative approaches and partnerships.

This program assessment is not an evaluation or a comprehensive critique of the process; rather, it is designed to be a thoughtful sampling at a given point in time of how EPA NEPA Review staff and their federal agency NEPA preparer/reviewer counterparts currently work together to accomplish the goals of NEPA. The assessment is an independent analysis based on the professional judgment of the assessment team informed by extensive interviews and analysis.

### Who Conducted the Assessment?

The assessment team composed of Sarah Palmer, Patricia Lewis and Gail Brooks from the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), conducted the assessment and is wholly responsible for the information presented in this report.

The U.S. Institute was established by the U.S. Congress in 1998 as part of the Morris K. Udall Foundation, an independent federal agency of the Executive Branch. The U.S. Institute provides assistance to parties involved in natural resource, environmental and public lands issues where federal agencies are involved. Services of the U.S. Institute include conducting impartial assessments on behalf of federal agencies and other parties to determine whether collaboration and conflict resolution are appropriate tools in the context of environmental decision-making. It is also charged with assisting the Federal Government in implementing Section 101 of the National Environmental Policy Act through the use of the tools of environmental conflict resolution and collaboration.

## What was the Assessment Methodology?

The assessment was designed to engage staff of the EPA 309 Review program and federal agency staff involved in NEPA preparation and/or coordination across the ten EPA regions. EPA Regional, OFA and CPRC staff consulted with the assessment team to develop the assessment methodology.

EPA staff comments helped inform the assessment team's approach and the categories of interview questions. The assessment team also benefited from input and advice from an internal team of colleagues at the U.S. Institute.

The assessment team developed, for assessment interviewees, a set of questions to address the following areas of interest:

- General (length and breadth of experience with NEPA review process, etc.)
- Current Process (the NEPA Review Process as it stands now)
- Collaboration (the degree to which collaboration occurs and how it is supported by the agencies)
- Dynamics (personal, situational)
- Opportunities (for collaboration and early involvement)
- Tools and Resources (available and needed)

The complete list of interview questions is provided in Appendix A.

The assessment team conducted confidential, one-on-one interviews with 62 individuals between February and June 2006. The assessment team interviewed each of the regional NEPA review coordinators and OFA staff at EPA Headquarters (18 people) and then randomly selected at least one NEPA review staff in each EPA region to interview (16 people). Twenty-eight federal agency interviewees were selected by the Team from a larger pool of candidates suggested from NEPA review coordinators and NEPA review staff. A list of federal agencies interviewed is located in Appendix B. Interviews lasted an hour to an hour-and-a-half, on average. The majority of interviews were conducted on the phone; some were conducted in person.

The assessment team analyzed interviewee responses to the questions by category and identified any cross-cutting themes as well as common perceptions that emerged by region. All interviewee comments were given equal weight. Where there are differences in

responses between EPA and federal agency staff they are noted and identified throughout this report. The results of these interviews are synthesized in this report without attribution to any individual interviewee. The assessment team asked for and received prior approval from participants to quote them or to identify projects that are used in this report to illustrate a process.

The draft report was distributed to all interviewees, who were asked to review the draft and comment on any missing information or areas needing clarification. Nine individuals provided comments on the draft report. The assessment team reviewed these responses and revised the report to provide greater clarity as the team considered appropriate.

### III. ANALYSIS AND FINDINGS

This section presents the views and perceptions of interviewees, which the assessment team analyzed to identify the key themes. The key themes focus on early involvement and collaboration, relationships and communication, understanding of mission and authorities, and roles and responsibilities. In addition, several secondary themes emerged that shape early involvement and collaboration in the review process.

#### Early Involvement/Collaboration

##### Early Involvement

Across all interviewees (EPA review staff and federal agencies) there was broad support for EPA's early involvement in the NEPA process. Several agencies expressed a desire to have EPA involved earlier: *"If staff is involved in a project early (such as with \_\_\_\_\_), issues can be discussed and resolved before the Draft EIS, which reduces the severity or nature of the comments EPA makes during review."* Up-front, early, and ongoing communication was viewed as the responsibility of all agencies engaged in NEPA. Everyone agreed that comments are more meaningful (have greater context and import) when EPA is involved earlier (e.g., before or as soon as the NOI is published). However, some interviewees cautioned that earlier involvement is not a guarantee of successful outcomes, such as favorable ratings.

**Juneau Access Highway (Alaska).**

EPA sat at the table; involved with the project pre-scoping. There was a joint process of looking at options, weighing in on alternatives. When EPA wrote their letter and rated the EIS, there were no surprises.

EPA review staff and federal agency environmental staff have wide-ranging views on when, how and under what circumstances to get engaged early in a project. For example, some EPA

reviewers are involved at the conceptual stage; others engage when they see the Federal Register Notice or by attending pre-scoping meetings; many don't get involved until the 309 Review process commences. Depending on the situation, agencies may seek EPA's involvement only at the draft EIS stage. EPA review staff and agency environmental staff interviewed are seeking guidance on early involvement (see options listed in the recommendations section).

## Collaboration

Collaboration (agency-to-agency, reviewer-to-associate reviewer, regional staff-to-OFA) was viewed favorably and essential to the job. Without exception, interviewees reported collaboration as key to successful outcomes. EPA's involvement in collaborative processes was viewed as positive and a way to avoid conflicts at the Draft EIS stage. EPA review staff and agency environmental staff also generally reported receiving support in their agencies for collaboration.

Across all interviewees collaboration was defined broadly and differed from person to person: for some, collaboration is used synonymously with *cooperating agency* status; for others, collaboration is defined as *working together to solve a problem or develop solutions*. Some agencies consider *collaboration*, *cooperation* and *coordination* as distinct processes, whereas others use the terms interchangeably.

The interviews revealed several factors that contribute to success in collaboration: (1) understanding the regulations and statutes that govern what can and cannot be done; (2) information gathering on what's important to EPA and other agencies: asking questions, requesting information, identifying information needs; (3) developing and keeping expectations that are realistic to the situation and the process; (4) raising awareness of the issues and opportunities (for collaboration, for mitigation, etc.); and (5) participating in site visits and interagency meetings – both considered vital to learning about a project, to better understanding the range of issues involved and to conducting productive reviews.

Several agencies noted that EPA NEPA reviewers contribute to projects by facilitating discussions, serving as advisors, asking helpful questions, helping to identify common interests among agencies in the NEPA review process or assisting with analysis. *"EPA met on a regular basis (quarterly and one-on-one meetings) with the agency to bring them up-to-speed. EPA in the region became a resource for doing the analysis. The lead agency decided to do a cumulative impact analysis, which finally accomplished their goals."* Some federal agency staff also perceived EPA reviewers as better at coordinating (exchanging information, attending meetings) than they are at collaborating (working toward a shared goal).

Obstacles to early involvement and collaboration. Involvement early in the NEPA process and collaboration throughout the NEPA process require both federal agency and EPA resources (staff, time and money) that are not always available. All interviewees commented that limited resources constrain early involvement and collaboration. *“It [early involvement] is an investment that has to be weighed against other demands. The region must be selective about where we put our efforts.” “The biggest constraint to collaborating is time and people. [We] want to collaborate and have plans to talk to people but never get the time.”*

Additional perceived challenges to early involvement and/or collaboration include:

- Some EPA interviewees commented that sometimes federal agencies are not responsive to EPA’s desire to be involved early — agencies do not inform EPA of a project until the Draft EIS or agencies are unwilling to address EPA review comments. Similarly, some agencies commented that they are not always certain if EPA reviewers will engage early or collaboratively on some projects; agencies invite EPA to participate but they do not always hear back from EPA.
- To some federal agencies, collaboration means giving up one’s decision-making authority, thus potential opportunities for early engagement and a commitment to collaboration may be more limited in some agencies. *“Definition of collaboration: it’s a power sharing thing. Regardless of decision-making authority, people in collaboration can see positions change and proposals change as a result of their input. But power sharing can also be an obstacle to collaboration.”*
- High profile and/or politically sensitive projects make meaningful collaboration difficult. Collaboration was also reported to be challenging when elected or appointed officials engage midstream or late in the process.
- A perception that some participate in collaborative processes only to serve their interests rather than to inform a process or work together to solve a problem. *“... some agencies interpret collaboration as wanting EPA to ‘do things their [the agency’s] way,’ to not have objections so they can get the project completed.”*
- Changes in staff mid-stream in a project require re-establishing rapport, trust and communication within the project group, all of which take time.

## Relationships/Communication

Good working relationships based on mutual respect, honesty and transparency were viewed as key to fostering collaboration. Interviewees reported greater collaboration between agencies, among NEPA reviewers and associate reviewers (program staff), and with OFA staff when interpersonal relations were positive. *“Attain early involvement by spending more*

*time nurturing relationships with agencies, call them, talk to them, build trust ...*” It takes time to develop rapport and trust among peers and colleagues to foster positive relationships that lead to collaboration. Interviewees were more likely to pick up the phone and call a peer or colleague in another agency when long-term relationships had been established. *“EPA staff and the federal agencies in the region have been working together a long time; they have been on their jobs a long time; so they tend to work a lot as a team . . .”*

Most agencies reported having a good working relationship with EPA. *“Some in EPA are good at asking focused questions; especially adept at scoping meetings; [this] conveys an approach to the lead agency that is very valuable.” “EPA is helping \_\_\_\_ to work through the newest interpretation of the regulations; being good advisors.”*

The more frequently cited challenges to collegiality and information sharing were: personality conflicts; adherence to a particular agenda; and strong emotions and/or body language that may, in some cases, indicate attitudes counter to collaboration.

**2005 O’Hare airport expansion project.** This project exemplifies interagency coordination. FAA sought EPA out. They [EPA] were involved in interagency scoping and developing the methodology. When FAA generated work projects, Region 5 had already provided informal review of some of those products. Once the draft EIS comment period closed, EPA met with FAA and others and found FAA responsive to EPA’s advice. Internally, the project was coordinated very well. When asked more about why this was successful, the EPA interviewee said its success was owed to the EPA team’s effectiveness and the attention paid to interagency relations.

Relationship-building appears to be crucial to early involvement and collaboration, and can be achieved in a variety of ways. Interviewees offered the following tips as advice to new staff.

- Work to understand issues of other agencies; be receptive to understanding projects from the agency’s perspective.
- Get to know associate reviewers, OFA staff and federal agency project managers.
- Don’t wait to be called; make the call yourself.
- Treat everyone with respect.
- Learn to use the vocabulary and the lingo of the agencies you’re working with.
- Agree to disagree.



- *“Make alliances. Declare an armistice, and then make the next one better. Work as a team instead of against one another.”*
- Remain emotionally detached.
- Attitude plays an important role in collaboration, particularly keeping an open mind about both the players and the process. Come to the table without prejudices and biases or an “agenda”; know what to say/not say in critical situations and respect each other’s missions and mandates, even if you don’t agree.

## Missions and Authorities

EPA’s understanding of federal agency missions and federal agencies’ understanding of EPA’s 309 Review authority were seen as key to productive 309 reviews. However, the level of knowledge and understanding of missions and authorities varied by EPA region and by agency. Interviewees commented that more information on missions and authorities would facilitate earlier involvement of review staff and, at the project level, improve coordination and communication between EPA and federal agencies.

There are considerable differences in perspectives across EPA reviewers and federal agencies about the scope of comments EPA reviewers should make. Some federal agency interviewees questioned whether EPA comments and ratings are enforceable. They view EPA comments as suggestions or recommendations: *“Would also like to know at what point can EPA ‘police’ agencies. Not sure what tools EPA has to enforce NEPA – do they rely on litigation?”* Some federal agency interviewees were of the opinion that EPA’s role should be limited to providing recommendations concerning environmental impacts on air/water quality and wetlands resources and should not comment on other issues, such as purpose and need: *“Lead agencies want to limit agency comments to just ‘their [EPA’s] expertise’.”*

Limited awareness or uncertainty about agency missions and authorities can be an underlying cause for misunderstanding and may lead to conflict. For example, some federal agency interviewees reported frustration that EPA 309 reviewers were not always mindful that federal agencies have to respond to and deal with numerous and varied constituents with diverse interests -- social, economic, historic -- not just environmental concerns. *“Sometimes EPA gets ‘wrapped around the axle’ and loses sight of the big picture.”*

Most interviewees acknowledged that experience counts in the NEPA review process and that in addition to knowledge of the regulations and the process, addressing the more complex and convoluted issues can really only be learned through experience. Interviewees appreciate and value the resources and training available to them. Most EPA interviewees reported that senior staff (in the regions and at Headquarters) provides valuable expertise.

Several said that on-the-job training and mentoring is the best way to build expertise. All interviewees suggested that more timely, relevant and interactive training would be beneficial.

Interviewees called for more forums for sharing information about NEPA best practices, the 309 Review process and relevant issues, and suggested several different avenues for doing this:

- Organize or support annual or biannual regional and national workshops on current and emerging substantive issues to be addressed through the NEPA process.
- Continue existing forums and re-establish previous forums; refocus them on best practices.
- Make the annual national EPA NEPA forum accessible to a greater number of regional review staff in order to share lessons learned and best practices.
- Offer more web-based tools and Intra/Internet platforms for sharing information.
- Continue to take advantage of multi-agency forums like the Federal Leadership Forum<sup>2</sup> to share, and heighten their collective awareness of each other's missions and authorities.

## Roles and Responsibilities

Many interviewees emphasized the importance of defining roles and responsibilities, whether formally or informally, and identified misunderstandings or misperceptions of EPA's roles and responsibilities in the NEPA review process.

### EPA Cooperating Agency and 309 Review Roles

Many expressed mixed perceptions and confusion about EPA's role as a cooperating agency versus its role in the 309 Review process. Confusion from federal agency interviewees included: a lack of clarity about which program within EPA, e.g., the 309 Review program or the Air or Water program, is the lead when EPA is a cooperating agency and how the EPA,

---

<sup>2</sup> The Rocky Mountain Federal Leadership Forum consists of principal managers of federal Rocky Mountain land management and regulatory agencies and was convened to address issues concerning development of oil and gas resources in the Rocky Mountain basin and the effect of development activities on other resources. The group's goal was to achieve a more unified approach to NEPA and to resolve issues related to oil and gas development.

in the absence of any “special expertise with respect to any environmental issue” (40 CFR 1506.1), might serve as a cooperating agency.

Reviewers reported that EPA engagement as a cooperating agency had mixed results, depending on the project, the lead agency, and the roles. Several federal and EPA interviewees indicated that EPA is more engaged and more collaborative as a cooperating agency. “*We want to see EPA participate as a cooperating agency, not just as a reviewer.*”

### **Expectations and Perceptions Regarding EPA’s 309 Review Role and linkage to EPA’s Mission**

Concerns were expressed both from federal agencies and EPA reviewers regarding EPA reviewers’ ability to maintain their objectivity when conducting a 309 Review if they have worked collaboratively with the lead agency and sponsors to develop the Draft EIS. Confusion about EPA’s role in a collaborative effort may lead to expectations that it has agreed, explicitly or implicitly, with the purpose and need and/or alternatives recommended in the Draft EIS. If this expectation is not fulfilled, agencies may respond negatively, which may influence how the agency engages EPA in future projects.

A perception held by some federal agencies and acknowledged by some EPA interviewees is that some EPA NEPA reviewers are seen as “environmentalists” or that they are aligned with environmental advocacy organizations. Misperceptions about EPA’s role are further complicated by the stated purpose of EPA’s 309 program and the context of EPA’s larger mission: to protect human health and the environment. Under Section 309 of the Clean Air Act<sup>3</sup> (CAA), EPA is required to review and publicly comment on the environmental impacts of major federal actions including actions which are the subject of draft and final Environmental Impact Statements, proposed environmental regulations, and other proposed major actions. If EPA determines that the action is environmentally unsatisfactory, it is required by Section 309 to refer the matter to the CEQ. The following comment by an EPA reviewer regarding EPA’s role in the 309 Review process may provide insight as to why this confusion exists: “*EPA still has to be the advocate for environmental issues and push the agencies to actively address these issues.*”

Many federal interviewees expressed a desire to better understand EPA’s 309 Review process, its roles and mandates, and how the EPA measures and tracks success within that process. Several EPA interviewees also expressed a desire for EPA colleagues in other program areas to have more information about EPA 309 authority and the breadth of EPA’s 309 Review role.

---

<sup>3</sup> July 14, 1955, c 360, § 309, as added Dec. 31, 1970, Public Law 91-604 § 12(a) 42U.S.C. § 7609 (1970).

Some specific suggestions by federal agency staff for enhancing working relationships with the EPA include:

- For EPA reviewers: a deeper understanding of all the issues a lead agency/proponent needs to consider in its EIS documents.
- When agencies invite EPA to participate in NEPA (as a cooperating agency/or in early involvement of reviewers): there needs to be a discussion of roles and expected responsibilities.

Several regions use MOUs or programmatic agreements as tools to formalize the relationships, roles, and points of involvement/concurrence in the NEPA process. These agreements may also include dispute resolution procedures.

### **Additional Factors that Shape Opportunities for Early Involvement and Collaboration in the NEPA Review Process**

The information presented in this section represents a compilation of factors that contribute to whether, how and when EPA review staff engages in a project early and/or collaboratively.

#### **Perceptions of Reviews and Comments**

EPA reviewers interviewed reported frustration with the variability in the quality of NEPA analysis and documents among and within agencies, districts and regions. *“Opening an EIS is like receiving an unexpected gift — you never know what you will find inside.”*

From the federal agency perspective, the substance and tone of EPA’s reviews vary by reviewer, region and at Headquarters. In situations where agencies work with multiple EPA regions, these inconsistencies can be frustrating and can impact agency and third party applicant resources, contract deliverables and other project milestones. Federal agency interviewees expressed a desire to see more consensus opinions from EPA reviewers, citing frustration when EPA reviewers, associate reviewers and/or Headquarters provide differing opinions. *“Different*

#### **The Kentucky/Indiana bridge project (Ohio River)**

Two EPA regions were involved, which made the coordination more difficult. One region had a slightly different perspective than the other. The Regional Administrator and Deputy RA got involved – the project ultimately came together over a series of several meetings and calls.

*EPA regions view projects differently . . .” “Challenge is you get different EPA reviewers and each has different preferences.”*

Some interviewees expressed the perception that EPA wants to halt certain projects with 309 Review comments and ratings. Several EPA interviewees believe this perception comes from the tone or wording of comment letters; comments that seem well reasoned to EPA reviewers may be received by the agency as intended to cause delay (e.g., asking for more analysis). Many federal agency interviewees expressed the opinion that the EPA asks for more analysis than is necessary: *“EIS analysis/documentation is never enough for EPA; they seem to want more. EPA doesn’t understand that what they’re asking for is very costly.”*

As a consequence of these perceptions, in some situations EPA reviewers and their federal agency counterparts become suspicious of each others’ motives. *“When \_\_\_\_ first started to go to meetings with \_\_\_\_ and other agencies, they would ask ‘Why are you here?’ There wasn’t a high level of trust.”*

### **Perspectives about the Ratings**

Most federal agency interviewees expressed a range of comments about the ratings. Interviewees noted that the distinctions between *EO* (environment objections) and *EC* (environmental concerns) are not clear and vary across regions and letters. A few suggested including more affirmative ratings above an LO (lack of objections). EPA interviewees indicated that there are disincentives for negative ratings: *“If/[you] give a poor rating . . . there is not enough time in the region to do the review; creates a disincentive... region avoids giving adverse ratings because it creates a huge workload.”*

In some agencies the focus appears to be more on EIS ratings than environmental outcomes. Many federal agency interviewees felt that the focus should be more on feedback and recommendations from reviewers for improving EISs rather than on ratings (e.g., some regions provide specific recommendations in their comment letters that are valued more than the ratings). Some federal agency interviewees remarked that 309 Review comments provide validation and support for their positions when they go back to project proponents/applicants with changes.

### **Adequacy of Resources Time/Staff/Funds**

Many EPA interviewees characterized the 309 Review process as high volume, unpredictable and chaotic. The types of projects vary by region and within regions. On certain types of projects, NEPA is concurrent with 404 Review. Many EPA interviewees suggested that tools to better predict and manage workloads would allow them to better identify projects for which collaboration was most appropriate.

With few exceptions, EPA review staff reported having insufficient time, staff and funds to comprehensively review all documents. Federal agency interviewees also confirmed that time, staff and resource constraints impacted the NEPA review process.

Most interviewees observed that agency actions are becoming more complex and, in some cases, more controversial, and are subject to more attention from upper management and appointees. Consequently, the NEPA review process takes more time and resources are diverted from other priorities. Streamlining initiatives, such as those used by Federal Highway Administration (FHWA) in the NEPA process, that include early involvement and agreements on concurrence points can help in conserving resources. However, the reported downside to streamlining is that it creates pressure to move projects too quickly through the environmental review process to a decision. Many interviewees reported tension between the emphasis on streamlining and the increasing complexity of projects and issues.

### **Internal Processes**

Many EPA interviewees reported frustration with the internal EPA administrative elevation procedure for controversial projects. Comments included: the process takes more time, is burdensome, and contributes to stress and tension. Some EPA interviewees who have been through the process value OFA's contribution but wonder about the added value of the Administrator's review. Others who have experienced the elevation process found that it strengthened EPA's position in comment letters. Some EPA interviewees thought that staff "esprit de corps" suffers as a result of the new elevation procedure.

Within EPA, review staff acknowledged the important contributions of associate reviewers (EPA staff outside of the 309 program who provide technical and policy advice in specific review areas such as air, water or wetlands), and recognized the demands that a review can place on them. The expertise of associate reviewers is highly valued; however, limited resources and competing priorities constrain the time they have to contribute to 309 Review. Review staff would like to get input from associate reviewers in a timely fashion, but it is not always possible.

## **IV. RECOMMENDATIONS**

The following recommendations are presented by the assessment team for the consideration of EPA's Office of Federal Activities. The recommendations are in two parts: first are primary recommendations regarding early involvement and collaboration and second, recommendations to enhance the current NEPA 309 Review process.

The recommendations were developed by the assessment team, through consideration of comments from interviewees in conjunction with the U.S. Institute's knowledge and experience with the practices of collaboration and environmental conflict resolution.

Acknowledging EPA resource limitations, the assessment team encourages OFA to consider how to prioritize and implement these recommendations.

### **Recommendations to Foster Meaningful Early Involvement and Collaboration in the NEPA Review Process**

To fully realize the benefits of early involvement, active engagement of EPA 309 Review and program staff as well as their federal agency counterparts engaged in NEPA is required. To facilitate early involvement and collaboration in the NEPA review process, consider an iterative approach to implementing these recommendations by identifying first those activities that are attainable within the Review program, and then those activities that require partnership with receptive federal agencies.

#### **Clarifying Early Involvement and Collaboration in the Context of NEPA 309 Review**

Perspectives and definitions of both early involvement and collaboration varied widely across interviewees. As a critical first step to enhancing early involvement and collaboration, under the leadership of the Office of Federal Activities, consider convening a group of regional reviewers recognized for their experience in collaborative processes, to work with in-house or other collaboration professionals to begin articulating and defining what early involvement and collaboration encompasses within 309 Review. Consider also distinguishing between when EPA engages collaboratively as a Cooperating Agency (as defined by 40 CFR 1501.6), and as a reviewer. This effort could build on the findings in this assessment and many of the CEQ NEPA Task Force activities underway in 2005-06 and would reduce confusion both within EPA and among other federal agencies.

#### **Resource Materials to Further Understanding of the Principles of Effective Collaboration**

Consider developing resource materials that include examples of what collaboration between EPA 309 program staff and federal agencies engaged in NEPA looks like, including the importance of collaborative attitudes and behaviors in creating an environment for productive conversations. Materials should include how EPA's collaborative versus 309 roles and responsibilities differ and at what points in the review process collaboration is appropriate or most beneficial.

Consider convening a work group of regional staff to develop practices that support the reviewer's roles and the 309 program goals. This could take the form of developing and institutionalizing "Best Practices" for reviewers as a tool to clarify their distinct roles both within the EPA and in relation to other federal agencies. Best Practices, if followed, might begin to reduce negative perceptions about reviewers as being 'green' or aligned with environmental advocacy organizations. Existing practices from environmental professionals and the dispute resolution field may offer useful perspectives.

### **Tools to Determine What Projects are Appropriate for Active Early Involvement and/or Collaboration**

Projects that are potentially contentious, high profile, or include scientifically complex issues may warrant active and on-going engagement of Review staff. This level of collaboration may be resource intensive. Resource constraints are a limiting factor across all federal agencies and programs, including the Review program. An essential first step to effective early involvement and/or collaboration in 309 Review is developing methods within and across regions to prioritize projects and identify those projects with the greatest potential to benefit from either EPA's early involvement or ongoing collaboration. Finally, look to the regions already utilizing internal prioritization tools and consider piloting them in other regions where workloads are especially significant.

Collaboration and early involvement may not be possible in every situation. Therefore, consider developing "questions to consider" to assess the prospects for successful collaboration and/or early involvement. For example:

- Will the benefits and advantages of working together outweigh the associated costs of collaborating (such as time and resources)?
- Will this project involve multiple EPA programs such as water/air quality or wetlands and, if so, would engaging early in this project improve internal coordination and communication?
- Is the lead agency and/or project proponent receptive to early involvement and/or collaboration?

### **Memoranda of Understanding/Agreement**

Where agencies are receptive and there is a mutual commitment, make use of Memoranda of Understanding/Agreement (MOUs/As) to create shared guidance and understanding of collaboration and the joint expectations for the NEPA process (Appendix C-1), including resource needs for site visits and group meetings. Agreements that are programmatic, rather



than project specific, might also include the types of EISs/issues relevant for early involvement and/or collaboration and the steps in the NEPA process where 309 Review program staff might engage (e.g., purpose & need, alternatives, impact analysis, mitigation measures). Programmatic MOUs could be one way to respond to the need for streamlining of reviews. MOUs that identify timelines, decision-making procedures, concurrence points, roles and responsibilities and dispute resolution processes were reported most effective (see Appendix C-2). Look to those individuals within EPA with experience negotiating such MOUs to draw on lessons learned from their experiences.

### **Cultivating the Current Shared Learning Environment**

NEPA reviewers are highly skilled and resourceful. They manage large volumes of complex and technical information across multiple projects. These skills, combined with the expertise of associate reviewers, reflect the significant depth of knowledge in the EPA 309 Review program. This capacity can be further enhanced by creating and maintaining forums for lessons learned and information sharing. Suggestions from interviewees include:

- Institutionalize multi-region, and, if feasible, multi-agency dialogues on major themes and issues, how they are addressed, lessons learned and information on common elements and emerging issues in NEPA (e.g., in the West – public lands; in the Southeast, hurricanes and wetlands, etc.) through:
  - Semi-annual or more frequent meetings
  - Electronic forums and/or regularized newsletters. The DOE’s “*NEPA Lessons Learned*” and FHWA’s “*Re: NEPA*” were two commonly cited examples of useful newsletters.
- Include on the OFA website, examples of how early involvement and/or collaboration contributed to a NEPA process and the project’s outcomes.
- Encourage and reward peer-to-peer discussions and mentoring across reviewers, technical staff and other agencies. Consider asking early involvement/collaboration mentors from each Region to provide guidance, coaching and mentoring across regions.
- Co-locate review staff within other agency offices (e.g., in FHWA or USDA-Forest Service office).

- Make more use of details between federal agencies and/or IPAs<sup>4</sup> (Intergovernmental Personnel Act) to deepen reviewer skills and increase understanding of other agencies' NEPA processes and vice-versa. In those regions experiencing a high volume of EISs, details from neighboring regions might be an effective way to alleviate high workloads.
- Establish continuing education requirements and minimum standards of training, including core competencies in collaboration, to emphasize the importance of the review program and to further reinforce that EPA is a learning organization.
- Where opportunities arise, encourage EPA 309 Review staff to attend other agencies' NEPA training, in particular training on the agency's specific NEPA guidance.
- Increase federal and EPA review staff's working knowledge of the EPA 309 program by including information about the 309 Review program in new EPA employee orientation and by offering 309 training to other federal agency NEPA staff.
- Publish *Who's Who in NEPA* – an online database that lists EPA and other federal agency NEPA experts and their areas of expertise.
- Utilize multi-agency forums, such as interagency workshops, the Federal Leadership Forum, resource councils and joint trainings as opportunities to clarify EPA roles, mission and authorities.

Training in collaboration/ECR/interest-based, multi-party negotiation provides an essential foundation for improving collaboration. Training may be offered as stand-alone sessions, as modules in current training programs, or tied to a specific project. Geographically-based multi-agency training also encourages networking and relationship building among individuals. Training could include:

- Communication and listening skills.
- Techniques for managing conflict and having difficult conversations.
- Role-plays and simulations, to provide a safe forum for EPA and federal agencies to walk in each other's shoes.

---

<sup>4</sup> The revised Intergovernmental Personnel Act (IPA) mobility program regulations (5 CFR part 334), effective May 29, 1997 provides for the temporary assignment of personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations.

- Managing teams and being a productive team member in multi-disciplinary and multi-agency teams.

For some topics, on-line or web-based training may be appropriate to refresh skills introduced in hands-on training.

### **When to Use Third Party Neutrals**

As greater emphasis is placed on collaboration and related skills in federal agencies, recognizing situations or circumstances where third party neutral assistance would be beneficial is important. Third party neutrals can assist parties by developing an impartial and systematic process to discuss difficult and complex technical information in environments where the trust between different groups may be low or the groups may be unfamiliar with each other. High conflict situations, multi-agency, multi-stakeholder processes are all situations where third party neutrals can facilitate information sharing and decision-making processes that move the group forward, reduce conflict, and help establish communication channels. Third party neutral assistance may also be useful to facilitate the resolution of intra-agency issues between EPA Headquarters and regions, across programs in the regions, or on projects where more than one region is involved. Written guidance on how to determine when to use third party neutrals in tandem with hands-on training is an effective way to provide this knowledge.

### **Organizational Commitment and Leadership**

Initiating and engaging in this assessment demonstrates the Office of Federal Activities' commitment to supporting early engagement and collaboration in the 309 Review program. For early involvement and collaboration to thrive, consider implementing additional organizational incentives to cultivate and reward meaningful early involvement and collaboration; e.g., monetary and other awards and acknowledgement.

### **Recommendations to Enhance the Current Review Process**

In addition to many of the above recommendations, the following, also based on interviewee comments with expansion by the assessment team, may help reduce points of tension within the Review program.

### **Workload, Staffing and Funding**

- Consider initiating an annual survey of agencies for projects being planned to provide an estimate of potential EIS activity in each region and to better allocate staff and resource needs.

- Enhance and expand the implementation of NEPAAssist<sup>5</sup> to all regions and other federal agencies and where feasible make greater use of other GIS-based tools.
- Consider alternative sources of funding, such as other federal and state agency funding, for NEPA review positions (e.g., FHWA for transportation review); or federal, state and/or local funding contributions for project review on a project-by-project basis.

## Policies and Procedures

- Explore ways to expedite or streamline the development and delivery of guidance for emerging national issues (e.g. LNG facility sitings).
- Further assess the sufficiency of the review criteria and how they are applied across regions on types or classes of issues, and if appropriate, identify opportunities for developing guidance on consistency in review.
- Explore ways to streamline the current internal elevation procedures and policy by clarifying the criteria for elevation, developing preliminary procedures in regions for achieving internal consensus on issues in controversy before they are elevated to OFA, and reducing the turn-around time for Headquarters' decisions.
- Explore ways to encourage greater coordination and consistent communication between the region(s) and OFA about issues of controversy when communicating to federal agencies.

## V. ACKNOWLEDGMENTS AND NEXT STEPS

Over the course of conducting the assessment the assessment team has gained a deep appreciation and respect for the individuals engaged in NEPA document review and preparation and a fuller understanding of the challenges they face.

The assessment team wishes to acknowledge the positive response to its requests for interviews and the flexibility and commitment shown by people who participated in the assessment. This support enhanced the assessment process significantly and deepened our knowledge of the EPA NEPA review process from both EPA and federal agency perspectives. Finally, the assessment team is pleased to have the opportunity to work with the EPA Office of Federal Activities and the EPA Conflict Prevention and Resolution Center (CPRC).

---

<sup>5</sup> NEPAAssist is a GIS-based mapping and spatial analysis tool recently piloted in some EPA regions.

The next steps after issuance of the final report are as follows:

- OFA will distribute the report to its staff and federal agency counterparts.
- The U.S. Institute will, on behalf of OFA, distribute the final report to all interviewees.
- OFA will review the Assessment recommendations and consider next steps and approaches to implementing the recommendations, setting priorities for implementation as appropriate.

## VI. RESOURCES

The following list includes agreements, reports, guidance and other documents the U. S. Institute Assessment Team used as resources and background material for the assessment.

### Agreements

The Bureau of Land Management, et. al. *Federal Leadership Forum Memorandum of Understanding*. 2000. Available at:

[http://www.epa.gov/region08/compliance/nepa/nepadocs/MOU Revised 00Jan.PDF](http://www.epa.gov/region08/compliance/nepa/nepadocs/MOU_Revised_00Jan.PDF)

*The goal of the MOU is to assist in furthering interagency cooperation and improving the overall NEPA coordination among the agencies.*

Federal Railroad Administration, et. al. *Memorandum of Understanding for the California Statewide High-Speed Train Program Environmental Impact Report/Environmental Impact Statement*. Sacramento, CA, 2003. Available at:

[http://www.cahighspeedrail.ca.gov/eir\\_final/pdf/vol\\_3/app\\_1a.pdf](http://www.cahighspeedrail.ca.gov/eir_final/pdf/vol_3/app_1a.pdf)

*A programmatic MOU that identifies federal agencies, including EPA, as cooperating agencies and outlines FTA's role as the lead agency.*

Mid-Atlantic Transportation and Environment Task Force. *Mid-Atlantic Transportation and Environmental Streamlining Process: A Framework for Change in the 21<sup>st</sup> Century*. May, 2000. Available at: <http://www.epa.gov/reg3esd1/nepa/mate/FinalMidRevised.pdf>

*Agreement forged by state and federal transportation and environmental agencies intended to encourage a streamline process that advocates a timely, cost-effective, environmentally sound transportation project development process and to develop a foundation of interagency coordination and cooperation on environmental and transportation issues.*

### Guidance / Regulations

Council on Environmental Quality, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500-1508.

Council on Environmental Quality, *NEPA's Forty Most Asked Questions*, Available at:

<http://ceq.eh.doe.gov/nepa/regs/40/40p3.htm>

North Carolina Department of Transportation, et. al. Memorandum of Understanding: Section 404 of the Clean Water Act and National Environmental Policy Act Integration Process for Surface Transportation Projects in North Carolina.

Available at: <http://www.ncdot.org/doh/preconstruct/pe/MERGER01/PIDMOU.html>

*Integrated approach as part of an effort to streamline the project development and permitting processes. The objective is to ensure that the regulatory requirements of Section 404 of the Clean Water Act are incorporated into the NEPA decision-making process for transportation projects in North Carolina.*

North Carolina Department of Transportation, et. al. *Implementation Guidance for Conflict or Dispute Resolution*. Raleigh, NC, 2003. Available at:

<http://www.ncdot.org/doh/preconstruct/pe/MERGER01/ConflictResolution.html>

*A procedure for elevating conflicts and unresolved issues that arise during the development, design and permitting NCDOT projects.*

U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance. *EPA's Section 309 Review: The Clean Air Act and NEPA*. July, 1999. Office of Federal Activities 2251A. Available at: [http://www.eh.doe.gov/nepa/tools/guidance/volume1/5-11-epa\\_309\\_caa\\_and\\_nepa.pdf](http://www.eh.doe.gov/nepa/tools/guidance/volume1/5-11-epa_309_caa_and_nepa.pdf)

*Quick reference brochure outlining EPA's responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act.*

U.S. Environmental Protection Agency, Region 10. *Guidance for Participating in the NEPA Process as a Cooperating Agency*. Seattle, WA, February 2005.

*Outlines systematic approach used to determine whether EPA Region 10 becomes a cooperating agency and that EPA Region 10's involvement as a cooperating agency reflects adequate coordination and communication internally and externally with lead agencies and others.*

U.S. Environmental Protection Agency, Region 10. *EPA Region 10 NEPA (Section 309) Notification and Review Process*. Seattle, WA, June, 2005.

*Outlines a 15-step procedure for administrative review of projects that receive an adverse rating or "may otherwise generate attention at the political appointee level at the Regional and HQ.*

### Assessment

Smythe, Robert and Isber, Caroline. *NEPA in the Agencies – 2002: A Report to the Natural Resources Council of America*. National Resources Council of America. Washington, D.C., October, 2002.

*An assessment conducted by an environmental advocacy group to determine how NEPA operates within the federal government and how it is viewed by those with the primary responsibility for its implementation.*

### Other

Dreher, Robert G. *NEPA Under Siege: The Political Assault on the National Environmental Policy Act*. Georgetown Environmental Law and Policy Institute, Georgetown University Law Center. Georgetown, MD, 2005. Available at:

<http://www.law.georgetown.edu/gelpi/news/documents/NEPAUnderSiegeFinal.pdf>

*Provides examples of projects where NEPA was instrumental to good decision-making, exemptions from NEPA, etc.*

Federal Highway Administration in collaboration with the U.S. Institute for Environmental Conflict Resolution. *Collaborative Problem Solving: Better and Streamlined Outcomes for All: Guidance on Managing Conflict and Resolving Disputes between State and Federal Agencies During the Transportation Project Development and Environmental Review*. Washington, D.C., 2002. Available at:

<http://www.environment.fhwa.dot.gov/strmlng/adrguide/index.asp>

U.S. Department of Energy. *National Environmental Policy Act Lessons Learned*. Quarterly Newsletter, March 2006. Available at: <http://www.eh.doe.gov/nepa/lessons.html>

U.S. Institute for Environmental Conflict Resolution. *Comments Submitted by the U.S. Institute for Environmental Conflict Resolution to Council on Environmental Quality NEPA Task Force on 'Federal and Inter-governmental Collaboration.'* Tucson, AZ, 2002. Available at: [http://ceq.eh.doe.gov/ntf/comments/pdfs/ceq\\_574.pdf](http://ceq.eh.doe.gov/ntf/comments/pdfs/ceq_574.pdf)

U.S. Institute for Environmental Conflict Resolution. *Should You Use a Collaborative Approach to NEPA?* Tucson, AZ.

*Power Point presentation that answers questions about when/if to collaborate in the NEPA process.*



## Appendix A: Interview Questions

**EPA OFA Assessment Interview Questions**

The following questions are intended to elicit your opinions about how the NEPA review process is currently carried out to identify its strengths and deficiencies and get your recommendations for improving the review process. Questions are wide-ranging and will explore how the process works for you currently, what tools and resources you have and need to do your job, the extent to which you collaborate internally with your EPA colleagues in the review process as well as with other Federal agency staff, internal and external dynamics affecting your work, and, finally, opportunities for change. Interviews and interview notes are confidential and will remain with the U.S. Institute project team. Information gathered from the interviews will be synthesized and reported without attribution to any individual or group.

- 1) Please tell us about your work as an EPA NEPA reviewer.
- 2) From your experience as a NEPA reviewer/preparer, tell us about an EIS that “worked” and one that did not, and why or why not.
  - a) In retrospect, what, if anything, would you have done differently? What do you think would be the biggest obstacle to doing things differently?
- 3) What tools and resources (e.g., guidance, training) do you rely on in the EIS review process? Are they effective?
  - a) What other tools or resources do you need or would you like that could improve your job
  - b) What changes would you make to the NEPA review process?
- 4) Who initiates your involvement in the NEPA review process and when do you typically get involved (*e.g., pre-scoping, drafting alternatives, analyzing alternatives at the DEIS stage, etc.*)?
  - a) Do you think earlier involvement in the NEPA review process is advantageous? If yes, what suggestions do you have for fostering involvement early in the NEPA review process? If not, please tell us why not.
- 5) OFA is interested in how collaboration might be used in the review process. To what extent do you collaborate within EPA and with other federal agencies in the NEPA review process?

- a) When you have collaborated with other agencies, when did you get involved in the process?
- b) When you have collaborated, what was the experience like for you?
- 6) Are there situations where you would not collaborate in the NRP? If so, please elaborate.
- 7) Does your agency support collaborative relationships internally and with other agencies? Explain how (e.g., encouragement/guidance) and describe the nature of the collaboration.
  - a) How could senior level policy and management staff better support you in accomplishing your collaborative NEPA review goals and objectives?
- 8) What tensions exist in the NEPA review process and how do you approach and/or deal with them?
- 9) How well do you feel other Federal agency environmental review staff understand EPA's mission and legal mandates with regard to NEPA and vice versa?
  - a) How well do you feel other Federal agency environmental review staff understand EPA's NEPA review criteria?
  - b) In your opinion, are any of the above obstacles to collaboration between/among agencies?
- 10) From all of your experience as a NEPA reviewer, what lessons learned can you share?
- 11) What opportunities/forums exist for sharing EIS "best practices" within your agency and with other agencies?
- 12) Who, in other federal agencies, would you recommend be contacted for a confidential interview?
- 13) What studies or reference materials do you suggest we look at that would help us with this project (e.g., we have read CEQ's report "Modernizing NEPA")
- 14) Who else in your agency should we contact for a confidential interview?
- 15) As we prepare our findings and recommendations report there may be things we've discussed today that we want to highlight in a way to prove a point. Before doing so we will first check with you to get your permission. In addition, there may be gaps in our notes that we need clarify with you. Should either case arise, may we contact you in the future?

## Appendix B: Agencies Interviewed

## **Federal Agencies interviewed for the Assessment**

In addition to 30 EPA staff members interviewed throughout the 10 EPA regions, a total of 31 NEPA preparers/reviewers were interviewed among the following federal agencies:

Federal Aviation Administration

Federal Energy Regulatory Commission

Federal Highway Administration

National Oceanic Atmospheric Administration

Nuclear Regulatory Commission

U.S. Army Corps of Engineers

U.S. Department of Agriculture, Forest Service

U.S. Department of Energy

U.S. Department of the Interior

U.S. Department of the Interior, Bureau of Land Management

U.S. Department of the Interior, Fish and Wildlife Service

## Appendix C: Example Memoranda of Agreement

**APPENDIX C-1**

**AMENDED MEMORANDUM OF UNDERSTANDING  
between  
UNITED STATES ARMY CORPS OF ENGINEERS, JACKSONVILLE  
DISTRICT;  
and  
NATIONAL PARK SERVICE, EVERGLADES NATIONAL PARK;  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT;  
UNITED STATES FISH AND WILDLIFE SERVICE, SOUTH FLORIDA FIELD  
OFFICE**

**AGREEMENT TO JOINTLY SPONSOR COLLABORATIVE  
COMBINED STRUCTURAL AND OPERATING PLAN (“CSOP”)  
ENVIRONMENTAL IMPACT STATEMENT (“EIS”) PROCESS**

**A. PARTIES**

This Amended Memorandum of Understanding (AMOU) is hereby entered into by, between, and among the United States Army Corps of Engineers, Jacksonville District (the “Corps”), the National Park Service, Everglades National Park (the “Park”), the South Florida Water Management District (the “District”), and the United States Fish and Wildlife Service, South Florida Field Office (the “Service”).

**B. PURPOSES**

As established in the National Environmental Policy Act (NEPA), under which this CSOP EIS process is being conducted, it is the continuing policy of the federal government, in cooperation with State and local governments, Tribes, and other concerned public and private organizations, to use all practicable means and measures, including technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Accordingly, the purposes of this AMOU are:

- To establish the parties' agreement and commitment in jointly sponsoring a collaborative Environmental Impact Statement ("EIS") process under NEPA in the development of a Combined Structural and Operating Plan ("CSOP") for Modified Water Deliveries to Everglades National Park (Mod-Waters) and the Canal 111 Project ("C-111").
- To establish the Park, the District, and the Service as cooperating agencies in the CSOP process.
- To affirm that the Corps has sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance and preparation of the EIS.
- To establish the commitment of the parties to seek agreement on key steps in the EIS process, including: development of the Purpose and Need Statement for the proposed action, development of the Goals and Objectives for the proposed action, development of a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.
- To affirm the commitment of the Corps to fully consider the views of the Park, the District, and the Service in developing its Record of Decision and to work with the agencies to collaboratively monitor the impacts of its decision.
- To affirm the agencies' agreement to jointly sponsor a multi-stakeholder process in which they will collectively consult with and seek the involvement of other entities that may have an interest in participating in the CSOP EIS process.
- To incorporate the Ground Rules to which reference is made in the original Memorandum of Understanding (C-13447), to make other changes consistent with the Ground Rules, and to make other changes.

### C. AUTHORITIES

This AMOU is based on and consistent with the authorities provided in the following laws, regulations, orders, decisions and documents:

- Everglades Preservation and Expansion Act of 1989, Public Law 100-229
- National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq.
- The Endangered Species Act of 1973, as amended, 16 USC § 1531 et seq.
- Environmental Policy and Conflict Resolution Act of 1998, Public Law 105-156
- Administrative Dispute Resolution Act of 1996, Public Law 104-320
- Title 33, Code of Federal Regulations, Part 320
- Title 40, Code of Federal Regulations, Parts 1500-1508
- Executive Order 11988, Floodplain Management, May 24, 1977
- Executive Order 11990, Protection of Wetlands, May 24, 1977



- Executive Order 13158, Marine Protected Areas, May 26, 2000
- Executive Order 13112, Invasive Species, February 3, 1999
- Executive Order 13089, Coral Reef Protection, June 11, 1998
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994
- Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended May 24, 1977
- Modified Waters General Design Memorandum (GDM), 1992
- Draft Supplemental Modified Waters GDM, April 2000
- C-111 General Reevaluation Report (GRR) Environmental Impact Statement, 1994
- Real Estate Memorandum (REDM), November 1994
- 8.5 Square Mile Area Record of Decision, December 2000
- Supplemental C-111 GRR Environmental Impact Statement, 2002

#### **D. RELEVANT GUIDANCE FROM COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)**

The establishment of this AMOU is consistent with the following guidance provided by the Council on Environmental Quality:

- Memorandum for Heads of Federal Agencies, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” with Attachment 1: “Factors for Determining Whether to Invite, Decline, or End Cooperating Agency Status”, January 30, 2002
- Memorandum for Heads of Federal Agencies, “Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act”, July 28, 1999
- “The National Environmental Policy Act: A Study of its Effectiveness After Twenty-five Years”, January 1997
- “Environmental Justice: Guidance Under the National Environmental Policy Act”, December 10, 1997
- “Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act”, January 1993
- “Council on Environmental Quality Guidance Regarding NEPA Regulations”, 1983
- CEQ’s Forty Most Asked Questions Concerning NEPA Regulations, March 21, 1981

## E. STATEMENT OF MUTUAL INTERESTS AND BENEFITS

All parties recognize they can benefit from collaboration on the CSOP EIS process, as well as from increased communication, disclosure of relevant information early in the analytical process, sharing of available data and staff expertise, improved coordination, avoidance of duplicated efforts, and proactive resolution of interagency disputes. Additionally, the parties can benefit from engaging in collaboration to help achieve better outcomes for all parties while ensuring that each agency's key mandates and legal requirements are adequately and appropriately met.

## F. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

### I. BASIC ROLES.

- The **U.S. Army Corps of Engineers** is the lead agency for the CSOP EIS process with the sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance, as well as preparation of the environmental impact statement. The Corps' mission is to provide engineering services to the nation, including the planning, designing, building, and operating of water resource and civil works projects. In accordance with this mission, the Corps began investigating the hydrologic problems in south Florida in the 1940's which resulted in their design and construction of a complex multi-purpose water management system designed to meet the needs of the region with regards to flood control, regional water supply for agricultural areas, urban areas and Everglades National Park, the preservation of fish and wildlife resources, the prevention of salt-water intrusion, navigation and recreation. The Corps has special expertise in all aspects of water resource engineering and management that includes meteorology, hydrology, planning, design, construction, the integration of project features and operations, and a detailed understanding of the operational capabilities and limitations of the water management system to contribute to a well-informed decision on CSOP.
- **Everglades National Park**, as the primary funder of the Modified Waters project, is a principal benefactor of the CSOP process. The Park's mission is to preserve unimpaired the natural and cultural values of Everglades National Park for the enjoyment, education, and inspiration of this and future generations, including a permanent wilderness preserving essential primitive conditions including the natural abundance, diversity, behavior, and ecological integrity of its flora and fauna. The Park has special biological, ecological, and hydrology expertise to contribute toward a well-informed decision on CSOP.
- The **South Florida Water Management District** is the local sponsor of the C-111 project and primary operational implementer of the CSOP decision. The mission of the South Florida Water Management District is to manage and protect water

resources of the region by balancing and improving water quality, flood control, natural systems, and water supply. The District has special biological, ecological, and hydrology expertise, as well as detailed understanding of the capabilities and limitations of the regional water management system, to contribute toward a well-informed decision on CSOP.

- The **U.S. Fish and Wildlife Service** has legal responsibility to enforce the Endangered Species Act and to review proposed actions to determine whether they would result in jeopardy to any endangered species; and if so, how to mitigate or avoid that jeopardy situation. The Service has the responsibility to communicate its determinations to the lead agency through a Coordination Act Report, which is incorporated into the environmental impact statement. The Service has special biological and ecological expertise to contribute toward a well-informed decision on CSOP.

## **II. THE CORPS SHALL:**

1. Serve as the lead agency for the CSOP EIS process with sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance, as well as preparation of the environmental impact statement.
2. Designate the Park, the District, and the Service as cooperating agencies in the CSOP EIS process.
3. Fully utilize the relevant data and assessments provided by the Park, the District, and the Service in support of the decision-making process.
4. Seek agreement with the Park, the District, and the Service on key steps of the NEPA process, including: development of the Purpose and Need Statement for the proposed action, development of the Goals and Objectives for the proposed action, development of a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.
5. Utilize mediation to resolve important disagreements among the four sponsoring agencies involving issues during the NEPA process.
6. Elevate unresolved issues to the next highest level of decision-making within the District, the state, the U.S. Fish and Wildlife Service, or Everglades National Park when three of the four agencies have agreed that they are at an impasse, which requires elevation to resolve.
7. Exercise its independent authority regarding issues of key importance to the other parties to this agreement only after mediation and elevation efforts, pursued according to a mutually agreed upon schedule and deadline, have failed to resolve an impasse.

8. Fully consider the views of the Park, the District, and the Service in developing its Record of Decision.
9. Work with the Park, the District, and the Service to collaboratively monitor the impacts of its decision.

**III. THE PARK, THE DISTRICT, AND THE SERVICE SHALL:**

1. Serve as cooperating agencies and joint sponsors with the Corps of a collaborative CSOP EIS process.
2. Contribute data and information relevant to the CSOP decision-making process.
3. Cooperate with the Corps in providing neutral facilitation and mediation support for the CSOP EIS process, as mutually determined is required.
4. Provide adequate staff resources to ensure active participation on the interagency CSOP Core Planning Team ("Team") and its Sub-Teams to provide for timely development and review of draft documents.

**IV. THE CORPS, THE PARK, THE DISTRICT, AND THE SERVICE SHALL:**

1. Work collaboratively with each other through the Team to develop a statement of the purpose and need for the proposed action, the goals and objectives for the proposed action, the process for scoping relevant issues, the process for involving other interested and affected entities, the schedule for completion of milestones, development of a range of alternatives, modeling and analysis of alternatives, consideration of public comments, development of a preferred alternative, and monitoring the impacts of the decision.
2. Designate appropriate representatives with relevant technical expertise to the Team and any Sub-Teams established, which will seek to develop options for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each agency.
3. Seek the endorsement and active support for their participation in a collaborative CSOP EIS process within their own hierarchies and up any relevant chains-of-command or necessary levels of review and approval for decisions during the CSOP process.

**V. INTERAGENCY CSOP CORE PLANNING TEAM.**

Each party shall designate representatives with relevant technical expertise to the Team and any Sub-Teams established, which will seek to develop

options for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each party.

**VI. GROUND RULES FOR INTERAGENCY COLLABORATION ON CSOP.**

The set of ground rules for interagency collaboration attached as Exhibit "A" to this AMOU shall govern interagency activities in the development of options on the CSOP.

**G. STANDARD CONDITIONS:**

- I. AUTHORITIES.** Nothing in this AMOU shall be construed to extend the jurisdiction or decision-making authority of any party to this AMOU beyond that which exists under current laws and regulations. Nothing in this AMOU shall be construed as limiting or affecting the authority or legal responsibility of any party, or as binding any party to perform beyond the respective authority of each, or to require any party to assume or expend any specific sum of money. The provisions of this AMOU are subject to the laws and regulations of the State of Florida, the laws of the United States, and the regulations of the Department of the Army and the Department of the Interior, as they may be applicable. Nothing in this AMOU shall be construed as affecting the decision-making requirements of any party or impairing the independent judgment of each party regarding policy decisions.
- II. LEGAL RIGHTS AND REMEDIES.** Nothing in this AMOU shall be construed to alter the legal rights and remedies that each party would otherwise have. No party waives any legal rights or defenses by entering into this AMOU or participating in the process contemplated hereby. This AMOU may not be used as evidence by or against any party in any legal proceeding, whether now existing or subsequent.
- III. SOVEREIGN IMMUNITY.** The State of Florida, political subdivisions and the agencies of the federal government do not waive their sovereign immunity by entering into this AMOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this AMOU.
- IV. SEVERABILITY.** Should any portion of this AMOU be judicially determined to be illegal or unenforceable, the remainder of the AMOU shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- V. THIRD PARTY BENEFICIARY RIGHTS.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this AMOU shall not be construed so as to create such

status. The rights, duties and obligations contained in this AMOU shall operate only among the parties to this AMOU, and shall inure solely to the benefit of the parties to this AMOU. The provisions of this AMOU are intended only to assist the parties in determining and performing their obligations under this AMOU.

- VI. **NON-FUND OBLIGATION DOCUMENT.** This AMOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate rules, policies, and statutory authority. This AMOU does not provide such authority. Specifically, this AMOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the AMOU. Any specific cost sharing or funding shall be executed separately through other funding mechanisms, as deemed necessary and appropriate by each of the signatories.
- VII. **PARTICIPATION IN SIMILAR ACTIVITIES WITH OTHER ENTITIES.** This AMOU in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
- VIII. **MODIFICATION.** Any party may request changes in this AMOU. Any changes, modifications or amendments to this AMOU which are mutually agreed upon by and among the parties to this AMOU shall be incorporated by written instrument, executed and signed by all parties to this AMOU.
- IX. **TERMINATION.** Any party to this AMOU may terminate in writing its participation in this agreement in whole, or in part, at any time before the date of expiration, with 30 days notice to the other parties.
- X. **ENTIRETY OF AGREEMENT.** This AMOU, consisting of eight (8) pages, represents the entire and integrated agreement among the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- XI. **PRIMARY CONTACTS.** The primary agency contacts for carrying out the provisions of this AMOU shall be the CSOP Project Managers for each agency as designated in writing by such agency.
- XII. **EFFECTIVE DATE.** The effective date of this AMOU is the date of the signature last affixed to these pages.

- XIII. **COMPLETION DATE.** Unless terminated sooner, this AMOU is effective through December 31, 2007, at which time it will expire unless renewed by the parties through a duly executed amendment hereto.
- XIV. **EFFECT ON PRIOR MEMORANDUM OF UNDERSTANDING.** It is the intent of this AMOU to supersede and replace the original MOU (C-13447) relating to this same subject entered into by the parties.

**H. SIGNATURES**

In witness whereof, the parties to this AMOU through their duly authorized representatives have executed this AMOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this AMOU, as set forth herein.

U.S. Army Corps of Engineers

Everglades National Park

---

Col. Robert M. Carpenter                      Date  
District Engineer

---

Maureen Finnerty                      Date  
Superintendent

South Florida Water Management District

U.S. Fish and Wildlife Service

---

Nicholas J. Gutierrez, Jr.                      Date  
Chairman, SFWMD Governing Board

---

James J. Slack                      Date  
South Florida Field Supervisor

**SFWMD PROCUREMENT APPROVED:**

---

Signature                      Date

**SFWMD OFFICE OF COUNSEL APPROVED:**

---

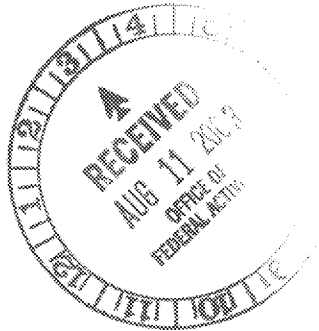
Signature                      Date



APPENDIX C-2

MEMORANDUM OF UNDERSTANDING FOR THE CALIFORNIA  
STATEWIDE HIGH-SPEED TRAIN PROGRAM ENVIRONMENTAL IMPACT  
REPORT/ENVIRONMENTAL IMPACT STATEMENT

MEMORANDUM OF UNDERSTANDING  
FOR  
THE CALIFORNIA STATEWIDE HIGH-SPEED TRAIN  
PROGRAM ENVIRONMENTAL IMPACT REPORT / ENVIRONMENTAL IMPACT STATEMENT  
BETWEEN  
FEDERAL RAILROAD ADMINISTRATION  
AND  
FEDERAL HIGHWAY ADMINISTRATION  
FEDERAL TRANSIT ADMINISTRATION  
US ARMY CORPS OF ENGINEERS  
US FISH AND WILDLIFE SERVICE  
US ENVIRONMENTAL PROTECTION AGENCY



SUBJECT: Federal Agency MOU for the California High-speed Train Program EIR/EIS

I. REFERENCES

- National Environmental Policy Act
- National Environmental Policy Act implementing regulations of the Council on Environmental Quality
- Federal Railroad Administration's Environmental Procedures
- Council on Environmental Quality's 40 Questions, No. 14b.
- California Environmental Quality Act
- Memorandum of Understanding on the National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects dated December 1993
- Federal Freedom of Information Act
- Clean Water Act
- Rivers and Harbors Act
- Marine Protection, Research, and Sanctuaries Act
- Fish and Wildlife Coordination Act
- Endangered Species Act
- Clean Air Act
- Safe Drinking Water Act
- Pollution Prevention Act
- Executive Order 12898 on Environmental Justice
- Resource Conservation and Recovery Act
- Comprehensive Environmental Response, Compensation, and Liability Act

## II. PURPOSE

The purposes of this Memorandum of Understanding (MOU) are:

- (a) To confirm the formal designation of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the US Army Corps of Engineers (Corps), the US Environmental Protection Agency (EPA), and the US Fish and Wildlife Service (FWS) as cooperating agencies to assist FRA in guiding the preparation of the Program Environmental Impact Report and Environmental Impact Statement (Program EIR/EIS) for the California Statewide High-Speed Train program,
- (b) To define each signatory's role, obligations, and responsibilities for participating in the preparation of the Program EIR/EIS,
- (c) To facilitate the preparation of a Program EIR/EIS that will enable each signatory to properly address potential program level environmental impacts for which they have expertise related to the alternatives under consideration, and
- (d) To provide a framework for cooperation and coordination among the signatories to facilitate completion of the National Environmental Policy Act (NEPA) process for the Program EIR/EIS, including issuance of any required findings, concurrences, or Records of Decision, and fulfill such environmental responsibilities as each signatory may have for the Program process.

## III. PROBLEM

The FRA is the lead Federal agency for this project. It is ultimately responsible for preparing the Draft and Final Program EIR/EIS's and for assuring compliance with the requirements of NEPA in conjunction with the California High-Speed Rail Authority (CHSRA), which must assure compliance with the requirements of California Environmental Quality Act (CEQA). Although the FRA agrees to give full respect and recognition to the jurisdiction of the cooperating agencies, the FRA is responsible for considering impacts to the quality of the natural and human environment associated with the proposed project. FRA cannot delegate its core NEPA responsibilities to the cooperating agencies. In meeting these responsibilities, the FRA will be guided by FRA's Environmental Procedures (64 Fed Reg. 28545) and the NEPA implementing regulations of the Council on Environmental Quality (40 CFR 1500 *et seq.*) FRA will use the environmental analyses, proposals, and special expertise of the cooperating agencies to the maximum extent possible consistent with its responsibilities, and as the lead agency, will retain ultimate responsibility for the Program EIR/EIS's content [see 40 CFR, 1501.6(a)(2) and CEQ's 40 Questions, No. 14b] in conjunction with the CHSRA. This includes defining the issues, determining purpose and need of the project, selecting or approving alternatives and mitigation measures, reviewing and requiring modification of the Program EIR/EIS, responding to comments on the Draft Program EIR/EIS, and retaining responsibility for the conclusions of its environmental analysis.

The signatories' goal is to prepare a Program EIR/EIS that contains all the information each signatory would require in order to fulfill their NEPA and/or regulatory responsibilities and to make independent decisions on their respective subject area designations and issues under their purview for this process. As such, the cooperating agencies are to participate in the NEPA process at the earliest appropriate time, make staff support available, exchange relevant information throughout the Program EIR/EIS process, submit independent recommendations, and assist FRA in developing responses to comments received on the Draft and Final Program EIR/EIS. The cooperating agencies will not be responsible for the actual preparation of any portion of the Program EIR/EIS or related technical reports; however, they will provide comments to FRA on their respective resource designations. Cooperating agencies will be kept apprised of the disposition of their comments.

#### IV. SCOPE

The FRA, the lead Federal agency, and the FHWA, the FTA, the Corps, the EPA, and the FWS, who have agreed to serve as the cooperating Federal agencies, have developed this MOU. The FAA has agreed to serve as a cooperating agency by letter in lieu of signing this MOU at this time. The purpose of this MOU is to clarify expectations for guiding the preparation and review of a combined, Tier 1, Program EIR/EIS that will describe and analyze the potential environmental effects of the proposed implementation of a Statewide California High-Speed Train System, the proposed action. This MOU describes these agencies' respective responsibilities regarding the preparation of a Program EIR/EIS pursuant to the requirements of the NEPA. The CAHSRA is the sponsor of the proposed action, and serves as joint lead agency with the FRA for preparation of the Program EIR/EIS and is responsible for compliance with the CEQA.

#### V. UNDERSTANDING

Under the policies, directives, plans, and operations of the FRA, and under NEPA [42 U.S.C. 4371 *et seq.*] the FRA, as lead Federal agency, has the responsibility to designate those subject areas to be treated in the Program EIR/EIS upon which each cooperating agency will focus its evaluation and review of environmental issues. These designations will be based upon the general legal jurisdiction and/or special expertise of the cooperating agency, and will not limit that agency's ability to comment on other environmental resources or aspects of the Program EIR/EIS.

Following the directives of NEPA, the signatories to this MOU shall cooperate fully and share information and technical expertise to evaluate the potential environmental effects of the proposed action and its alternatives. Each signatory shall give full recognition and respect to the authority, expertise, and responsibility of the others. Participation in this MOU does not imply endorsement of the proposed action, nor does it abridge the independent review of the Draft and Final Program EIR/EIS by the signatory agencies.

##### A. PROCEDURES

1. The principles of the Memorandum of Understanding on the National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects (NEPA/404 MOU) dated December 1993 shall be implemented to the fullest extent appropriate in the process of preparing the Program EIR/EIS, even though FRA is not a signatory to the MOU due to its limited project development responsibilities in the three affected states.
2. FRA will request concurrence consistent with the 1993 NEPA/404 MOU from the cooperating agencies with regulatory/resource responsibilities at key milestones in the Program EIR/EIS process. FRA agrees to provide relevant information consistent with the provisions of the December 1993 NEPA/404 MOU and this Program EIR/EIS (Tier 1) to these Cooperating Agencies in a timely and effective manner.
3. Cooperating Agencies with regulatory/resource responsibility under the December 1993 NEPA/404 MOU agree within forty-five (45) days of receipt of such information to concur or nonconcur on project purpose and need, section 404 basic and overall project purpose, project alternatives to be evaluated in the draft EIS, and selection of the preferred corridor and route most likely to yield the least environmentally damaging practicable alternative should the Program EIR/EIS (Tier 1) identify and select a preferred corridor and route for the project. Should the program advance, the Program EIR/EIS would be followed by detailed study in one or more second tier environmental assessments(s) (Tier 2), which may lead to additional EIR/EIS's, or other environmental documentation.

- a) If a written concurrence or non-concurrence as described in (b) above is not received within agreed-upon timeframes, the project proponent and other signatory agencies may move the Program EIR/EIS forward based on the presumption that the non-response means that the agency has no significant objections. To be considered valid, statements of non-concurrence will be accompanied by a substantive explanation of the basis for dissent. Agencies agree not to revisit previous agreements or key milestones unless there is significant new information or significant changes to the project, the environment, or laws and regulations.
  - b) If a resource/regulatory agency issues a written statement of non-concurrence, the signatories will attempt to reach agreement according to section V. [C.] (3.) within (20) days. If concurrence is not obtained by the end of that time, the Program EIR/EIS will be advanced incorporating the statement of non-concurrence.
4. As appropriate and to enhance the effectiveness of this MOU, the FRA will work with the cooperating agencies to ensure timely and efficient access to the expertise, data, information, analyses, and comments received.
  5. Each signatory will identify a designated Point of Contact (POC) for coordination and consistency on this highly visible project. Due to the complexity of the project, the agencies realize that this is a long-term commitment of resources and will make every effort to maintain the same POC through the duration of the NEPA process. If reassignment of the POC becomes necessary, the agency will notify the MOU signatories of the change. In such cases, previous positions recorded in the administrative record will not be revisited, unless there is significant new information or significant changes to the project, the environment, or laws and regulations.
  6. The signatories will ensure appropriate coordination, communication, project updates and status reviews occur, as needed, to keep each other current on the progress of the Program EIR/EIS.
  7. In coordination with the CHSRA, which serves as lead agency for CEQA compliance, the FRA will appropriately incorporate the comments, analyses, recommendations, and /or data submitted by the cooperating agencies in the Draft and Final Program EIR/EIS, and will utilize a systematic, interdisciplinary approach that will ensure the integrated use of the submitted material [40 CFR §1501.6(a)(2) and 1502.6].
  8. The FRA will promptly inform the cooperating agencies of all schedule changes that would affect an agency's ability to provide timely input for a document review. Adequate time, typically a 30-day goal, will be given for agency reviews, and every effort will be made to provide documents two weeks in advance of meetings.
  9. The cooperating agencies will keep confidential and protect from public disclosure any and all documents related to the Draft and Final Program EIR/EIS's that they receive prior to determination by the FRA of their suitability for public review or release under the provisions of the Federal Freedom of Information Act (FOIA), in accord with the FOIA implementing regulations of the lead or cooperating agencies.
  10. The agencies agree not to employ the services of any representative or party having a financial interest in the outcome of the proposed project. The cooperating agencies will take all necessary steps to ensure that no conflict of interest exists with its consultants, counsel, or representatives employed in this undertaking. [40 CFR §1506.5(c)] If disclosure statements are obtained as a result of contractor or other selection regarding this action, copies of the disclosure statements will be forwarded to the FRA for inclusion in the Administrative Record.

B. DESIGNATIONS

1. All signatories recognize that the Program EIR/EIS involves a conceptual level of detail, rather than the project level of detail typical for a Tier 2 analysis, and does not involve the issuance of permits or approvals for a specific project or projects.
2. All signatories recognize that, in this Program EIR/EIS, the agencies will be seeking to define the general framework and information needs for future decision making, e.g., on specific projects and permits, which would be treated in a Tier 2 environmental analysis or analyses and may be addressed in a future MOU concerning environmental review, NEPA/404 and/or cooperating agencies for purposes of NEPA compliance.
3. Based on each cooperating agency's special expertise and/or its general jurisdiction by law, the FRA, pursuant to its lead agency responsibilities [CEQ 1501.6 (b)(3)], makes the following requests:
  - a) FHWA: That FHWA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to highway planning, including input to the definition of the Modal Alternative, roadway travel demand, accident/safety impacts/benefits and potential effects of the Project on the Interstate Highways and their rights-of-way in California. The FHWA will also provide its expertise with respect to program level 4(f) evaluation.
  - b) FTA: That FTA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to commuter rail and multi-modal station planning, transit travel demand, feeder transit services, and potential effects of the Project on commuter rail and transit systems in California.
  - c) FAA: That FAA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to airport planning, aviation travel demand, input to the definition of the Modal Alternative and potential effects of the Project on airports and the aviation system in California.
  - d) Corps: That Corps focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to compliance with the applicable requirements of Section 404 of the Clean Water Act, as amended, Section 10 of the Rivers and Harbors Act and Section 103 of the Marine Protection, Research, and Sanctuaries Act.
  - e) FWS: That FWS focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to compliance with the applicable requirements of the Fish and Wildlife Coordination Act and the Endangered Species Act.
  - f) EPA: That EPA focus its efforts on those issues and subject areas to be treated in the Draft and Final Program EIR/EIS's pertaining or related to compliance with the applicable requirements of the Clean Air Act, as amended, Section 404 of the Clean Water Act, as amended, the Safe Drinking Water Act, the Pollution Prevention Act, and Executive Order 12898 on Environmental Justice. To the extent that the future projects may disturb areas contaminated with hazardous wastes or hazardous substances, EPA will review and comment on those issues in accordance with the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act. This participation does not

abridge the independent review of the Draft and Final Program EIR/EIS pursuant to NEPA Section 309 of the Clean Air Act (CEQ's 40 Questions, No. 15).

C. ADMINISTRATION

1. Nothing in this MOU will be construed as affecting the authority of any signatory beyond those agreements contained within this MOU.
2. This MOU does not obligate the FRA to provide funding for cooperating agency involvement in this or the NEPA/404 MOU efforts, nor does it require the signatory agencies to obligate or expend funds in excess of available appropriations.
3. If a disagreement should develop between FRA and a cooperating agency or agencies, the POC's of the involved agencies will expeditiously attempt to resolve the disagreement through reaching a consensus of those agencies. If timely amicable resolution is not achieved at the POC level, the matter shall be promptly referred to mid-level management of these agencies for their participation in the resolution process. In the event that mid-level managers are unable to reach a satisfactory solution, the matter will be referred to the persons whose signatures appear in Section VI of this MOU who will be asked by the FRA to convene a meeting or a conference call to reach a satisfactory resolution.
4. This MOU shall be terminated when the FRA issues a Record of Decision on the Program EIR/EIS or for reasons of good cause upon 30 days prior written notice from FRA. A theoretical example of good cause would be the withdrawal of the proposed action by the CAHSRA as the program sponsor.
5. Any signatory may request re-negotiation or modification of this MOU at any time. All signatories will consider the proposed changes, and upon mutual agreement, adopt the proposed changes. The signatory that proposed the change shall provide copies of the adopted revised MOU to the other signatories.
6. This MOU shall be incorporated into or referenced in the Draft and Final Program EIR/EIS's for public review so that each signatory's respective roles may be understood.

VI. EFFECTIVE DATE: JUL 18 2003

---

SUBJECT: *California High-Speed Train Program EIR/EIS Federal Agency MOU*

VII. AGREEMENT TO PARTICIPATE IN THIS MOU

  
\_\_\_\_\_  
Allan Rutter  
Administrator  
Federal Railroad Administration

JUL 18 2003

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert L. Davis,  
Brigadier General, U.S. Army, Commanding  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary N. Hamby  
Division Administrator  
Federal Highway Administration  
California Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Thompson  
Manager  
California/Nevada Operations Office  
U.S. Fish and Wildlife Service  
Region 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leslie T. Rogers  
Regional Administrator  
Federal Transit Administration  
Region IX

\_\_\_\_\_  
Date

\_\_\_\_\_  
Wayne Nasti  
Regional Administrator  
U. S. Environmental Protection Agency  
Region IX

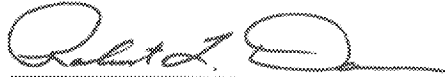
\_\_\_\_\_  
Date



VII. AGREEMENT TO PARTICIPATE IN THIS MOU

\_\_\_\_\_  
Allan Rutter  
Administrator  
Federal Railroad Administration

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert L. Davis,  
Brigadier General, US Army  
Division Engineer, South Pacific Division  
U.S. Army Corps of Engineers

11 May 03  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary N. Hamby  
Division Administrator  
Federal Highway Administration  
California Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Thompson  
Manager  
California/Nevada Operations Office  
U.S. Fish and Wildlife Service  
Region 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leslie T. Rogers  
Regional Administrator  
Federal Transit Administration  
Region IX

\_\_\_\_\_  
Date

\_\_\_\_\_  
Wayne Natri  
Regional Administrator  
U. S. Environmental Protection Agency  
Region IX

\_\_\_\_\_  
Date

\_\_\_\_\_  
Herman C. Bliss  
Airports Division Manager  
Federal Aviation Administration  
Western-Pacific Region

\_\_\_\_\_  
Date

SUBJECT: *California High-Speed Train Program EIR/EIS Federal Agency MOU*

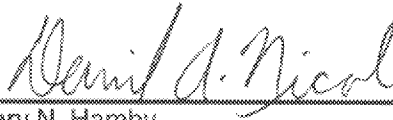
VII. AGREEMENT TO PARTICIPATE IN THIS MOU

\_\_\_\_\_  
Allan Rutter  
Administrator  
Federal Railroad Administration

\_\_\_\_\_  
Robert L. Davis,  
Brigadier General, U.S. Army, Commanding  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

*for*   
\_\_\_\_\_  
Gary N. Hamby  
Division Administrator  
Federal Highway Administration  
California Division

\_\_\_\_\_  
Steve Thompson  
Manager  
California/Nevada Operations Office  
U.S. Fish and Wildlife Service  
Region 1

APR 14 2003

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leslie T. Rogers  
Regional Administrator  
Federal Transit Administration  
Region IX

\_\_\_\_\_  
Wayne Nasti  
Regional Administrator  
U. S. Environmental Protection Agency  
Region IX

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SUBJECT: *California High-Speed Train Program EIR/EIS Federal Agency MOU*

VII. AGREEMENT TO PARTICIPATE IN THIS MOU

\_\_\_\_\_  
Allan Rutter  
Administrator  
Federal Railroad Administration

\_\_\_\_\_  
Robert L. Davis,  
Brigadier General, U.S. Army, Commanding  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary N. Hamby  
Division Administrator  
Federal Highway Administration  
California Division

\_\_\_\_\_  
Steve Thompson  
Manager  
California/Nevada Operations Office  
U.S. Fish and Wildlife Service  
Region 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Leslie T. Rogers  
Regional Administrator  
Federal Transit Administration  
Region IX

\_\_\_\_\_  
Wayne Nasti  
Regional Administrator  
U. S. Environmental Protection Agency  
Region IX

APR 11 2003  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SUBJECT: *California High-Speed Train Program EIR/EIS Federal Agency MOU*

VII. AGREEMENT TO PARTICIPATE IN THIS MOU

\_\_\_\_\_  
Allan Rutter  
Administrator  
Federal Railroad Administration

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert L. Davis,  
Brigadier General, U.S. Army, Commanding  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary N. Hamby  
Division Administrator  
Federal Highway Administration  
California Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Thompson  
Manager  
California/Nevada Operations Office  
U.S. Fish and Wildlife Service  
Region 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Leslie T. Rogers  
Regional Administrator  
Federal Transit Administration  
Region IX

\_\_\_\_\_  
Date

*for*   
Wayne Nasti  
Regional Administrator  
U. S. Environmental Protection Agency  
Region IX

*2 April 2003*  
\_\_\_\_\_  
Date

## Appointment

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 1/3/2018 12:07:46 AM  
**To:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]  
**CC:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** Prep for NEPA DDs' call  
**Attachments:** 2017\_12\_22\_R9edits\_Ratings Option Paper 21 Dec 2017 (002)kmg.docx  
**Location:** Kathleen's office  
**Start:** 1/3/2018 11:30:00 PM  
**End:** 1/3/2018 11:45:00 PM  
**Show Time As:** Busy

This is just a quick check-in to make sure we are on the same page before Thursday morning's DDs' call. Major topic of discussion on the call will likely be the ratings system options paper. Attached is the latest version, with Region 9's proposed edits. If I receive an updated version from HQ before we meet, I'll pass it along.

-Kathy

## Appointment

---

**From:** Knight, Kelly [knight.kelly@epa.gov]  
**Sent:** 12/13/2017 5:33:17 PM  
**To:** Knight, Kelly [knight.kelly@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Walsh-Rogalski, William [Walshrogalski.William@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Forren, John [Forren.John@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Westlake, Kenneth [westlake.kenneth@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Hessert, Aimee [Hessert.Aimee@epa.gov]

**Subject:** 309 Ratings Paper

**Location:** **Ex. 6 Personal Privacy (PP)**

**Start:** 12/19/2017 6:00:00 PM

**End:** 12/19/2017 7:30:00 PM

**Show Time As:** Busy

Message

---

**From:** Barger, Cindy [Barger.Cindy@epa.gov]  
**Sent:** 10/2/2019 6:39:17 PM  
**To:** Houston, Robert [Houston.Robert@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Beers, Samantha [Beers.Samantha@epa.gov]; Okorn, Barbara [Okorn.Barbara@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]; Westlake, Kenneth [westlake.kenneth@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Kluesner, Dave [kluesner.dave@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Wirth, Nikolaus [Wirth.Nikolaus@epa.gov]; Kajumba, Ntale [Kajumba.Ntale@epa.gov]; Ferreira, Steve [Ferreira.Steve@epa.gov]; Poetzsch, Michael [Poetzsch.Michael@epa.gov]; Higgins, Jamie [Higgins.Jamie@epa.gov]; Tilley, Amber [Tilley.Amber@epa.gov]; Summerlin, Joe [summerlin.joe@epa.gov]; Tyler, Jennifer (Blonn) [Tyler.Jennifer@epa.gov]  
**CC:** Knutson, Lingard [Knutson.Lingard@epa.gov]; Schaedle, Candi [Schaedle.Candi@epa.gov]  
**Subject:** RE: NEPA policy and procedures manual review  
**Attachments:** nepa\_policies\_procedures DRAFT 9-11-19\_edited\_2Oct19.doc

Here's where we ended today. As discussed, we'll restart this in November after everyone is through PARS season.

Thanks!  
Cindy

*Cindy S. Barger*  
*Director, Nepa Compliance Division*  
*Office of Federal Activities*  
*U.S. Environmental Protection Agency*  
*Washington, DC*  
*Tel: 202-564-3169*  
Cell: Ex. 6 Personal Privacy (PP)

-----Original Appointment-----

**From:** Barger, Cindy  
**Sent:** Monday, September 23, 2019 1:00 PM  
**To:** Barger, Cindy; Houston, Robert; Militscher, Chris; Beers, Samantha; Okorn, Barbara; Dunning, Connell; Strobel, Philip; Rudnick, Barbara; Nogi, Jill; Westlake, Kenneth; Fite, Mark; Kluesner, Dave; Timmermann, Timothy; Tapp, Joshua; Wirth, Nikolaus; Kajumba, Ntale; Ferreira, Steve; Poetzsch, Michael; Higgins, Jamie; Tilley, Amber; Summerlin, Joe; Tyler, Jennifer (Blonn)  
**Cc:** Knutson, Lingard  
**Subject:** NEPA policy and procedures manual review  
**When:** Wednesday, October 2, 2019 1:30 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Call-In Ex. 6 Personal Privacy (PP)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
POLICY

OCT 22 2018

**MEMORANDUM**

SUBJECT: Changes to EPA's Environmental Review Rating Process

FROM: Brittany Bolen  
Associate Administrator

A handwritten signature in black ink, reading "Brittany Bolen", is written over the "FROM:" line and extends into the "TO:" line.

TO: Regional Administrators

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, generally requires federal agencies to draft and publish for public comment an Environmental Impact Statement (EIS) when they propose to take a major federal action that has the potential to significantly affect the quality of the human environment.<sup>1</sup> Pursuant to Section 309 of the Clean Air Act (CAA), 42 U.S.C. § 7609, the U.S. Environmental Protection Agency (EPA) reviews and provides written comments on all draft EISs.<sup>2</sup> This responsibility is implemented through EPA's NEPA/309 program.

Over the past year, the NEPA/309 program has undertaken several efforts to improve its efficiency and effectiveness consistent with the goals outlined in Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.<sup>3</sup> These efforts have included soliciting feedback from our partner federal agencies, providing letter-writing guidance to EPA regions to improve the quality and consistency of our NEPA/309 comment letters, and increasing our focus on early engagement with lead agencies, as contemplated by the White House Council on Environmental Quality's (CEQ) Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807.<sup>4</sup> EPA also established performance measures that were tracked throughout fiscal year 2018, and reported a 99% timeliness and consistency rate across the EPA's NEPA/309 program. Additionally, the Office of Federal Activities, which, among other functions, administers the NEPA/309 program, was moved to the Office of Policy within the

<sup>1</sup> This memorandum refers to a federal agency that drafts an EIS as a "lead agency." See 40 C.F.R. § 1501.5.

<sup>2</sup> Although this responsibility is assigned to EPA by the Clean Air Act, its subject-matter scope is general and is not limited to review of EISs for their analysis of air quality effects.

<sup>3</sup> 82 Fed. Reg. 40463 (Aug. 15, 2017).

<sup>4</sup> Available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>.



Administrator's Office in furtherance of an Agency-wide approach to streamlining environmental review and permitting processes.

During the early stages of EPA's NEPA/309 program, the Agency instituted a policy of issuing an alphanumeric rating in addition to its written comments on draft EISs. *See* Policy and Procedures for the Review of Federal Actions Impacting the Environment, chapter 4 (Oct. 3, 1984) (1984 policy).<sup>5</sup> This rating system is a discretionary policy that is not required by NEPA, CAA 309, or any other statute, nor by any regulation. The 1984 policy established these ratings to categorize EPA's level of concern regarding the adequacy of a draft EIS, and to indicate whether a proposed action may be appropriate for referral to CEQ under CAA Section 309(b), and CEQ's NEPA implementing regulations. *See* 40 C.F.R. Part 1504.

As EPA's NEPA/309 program has evolved, the Agency has increased focus on early engagement efforts with lead agencies as a means to improve proposed actions and associated EISs prior to publication of draft EISs. Increasing lead agency sophistication in the development of EISs, coupled with our efforts to improve the quality of proposed actions and draft EISs, obviates the need for the 1984 rating system. Therefore, EPA will discontinue assigning alphanumeric ratings in our NEPA/309 comment letters. Where EPA has concerns with the adequacy of a draft EIS, the Agency will continue to provide robust written comments as required by CAA Section 309.

The discontinuation of the 1984 rating system follows a comprehensive evaluation by both Headquarters and Region NEPA/309 staff members, and external federal agency partners. As part of our review of the NEPA/309 program, EPA asked for input from our federal partners. In response, federal agencies indicated EPA's written comments are more useful than the ratings and lead agencies accordingly focus their attention on those comments.

EPA believes that discontinuing use of the 1984 rating system will not lessen environmental protections, but will help to focus attention on resolving issues, eliminate perceptions that ratings are inconsistently applied across the Agency, and minimize any confusion on the part of our partner agencies and the public. We anticipate that this change will also strengthen constructive interagency engagement and collaboration. The discontinuance of the rating system will not change the substance of EPA's review of draft EISs. Identification of potential issues and associated recommendations to ensure compliance with NEPA and CEQ's implementing regulations—from having no concerns, to raising concerns with an EIS's assessment of environmental impacts, to identifying reasonable alternatives and opportunities for mitigation—will remain unchanged. In the rare instance where we believe a proposed action may involve unsatisfactory environmental impacts, our comment letters will continue to specifically indicate that the action as proposed may be appropriate for referral to CEQ. *See* CAA Section 309(b); 40 C.F.R. Part 1504; 1984 policy, chapter 9.

Moving forward, I ask that you continue to look for opportunities to strengthen our early engagement efforts during development of draft EISs. Reinforcing early engagement supports a more collaborative, efficient, and effective environmental review process that has the potential to improve environmental outcomes and avoid project delays.

---

<sup>5</sup> Available at [https://www.epa.gov/sites/production/files/2014-08/documents/policy\\_and\\_procedures\\_for\\_the\\_review\\_of\\_federal\\_actions\\_impacting\\_the\\_environment.pdf](https://www.epa.gov/sites/production/files/2014-08/documents/policy_and_procedures_for_the_review_of_federal_actions_impacting_the_environment.pdf).

I have asked staff within the Office of Federal Activities to implement this policy change as outlined in the Attachment, including by revising the 1984 policy to ensure consistency with this memorandum. This memorandum supersedes all conflicting sections of previous EPA guidance of any form that specifically addresses application of the NEPA/309 rating system and is effective immediately. EPA will continue to review its implementation of the NEPA/309 program to ensure it fulfills our statutory role, consistent with NEPA and CEQ's implementing regulations, and constructively assists our federal partners in protecting the quality of our environment.

cc: Robert Tomiak, Director, Office of Federal Activities, Office of Policy

## ATTACHMENT

### Implementation and Outreach for Changes to the NEPA/309 Rating Process

The Office of Federal Activities will institute the following actions:

1. Provide training for NEPA lead reviewers and regional managers in the review chain to ensure consistency in implementation;
2. Communicate to the federal NEPA practitioner community during the next scheduled White House Council on Environmental Quality NEPA contact meeting/webinar that use of the 1984 rating system has been discontinued;
3. Reach out to counterparts at federal agencies to answer any follow-up questions or provide requested assistance;
4. Include information to explain these changes in EPA comment letters for the first year following the issuance of the NEPA/309 program memorandum;
5. Provide information to the public on EPA's NEPA/309 program changes with an explanation of how the changes support the Administration's goals;
6. Update the *Policy and Procedures for The Review of Federal Actions Impacting The Environment*;<sup>6</sup>
7. Update the EPA website to reflect the discontinued use of the 1984 rating system, including a message that would be provided to lead agencies at the time they electronically file their EISs with EPA; and
8. Follow-up with federal agencies six to twelve months after the implemented program change to solicit feedback and evaluate effectiveness.

---

<sup>6</sup> Available at [https://www.epa.gov/sites/production/files/2014-08/documents/policy\\_and\\_procedures\\_for\\_the\\_review\\_of\\_federal\\_actions\\_impacting\\_the\\_environment.pdf](https://www.epa.gov/sites/production/files/2014-08/documents/policy_and_procedures_for_the_review_of_federal_actions_impacting_the_environment.pdf).

Message

---

**From:** Gerdes, Jason [Gerdes.Jason@epa.gov]  
**Sent:** 3/19/2019 11:04:56 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** FW: nepa\_policies\_procedures DRAFT (all mark-ups Feb 2016).docx  
**Attachments:** nepa\_policies\_procedures DRAFT (all mark-ups Feb 2016).docx

Connell,

Attached is the version of the Policies and Procedures Manual with the proposed changes.

Jason

---

**From:** Westlake, Kenneth  
**Sent:** Tuesday, March 19, 2019 12:10 PM  
**To:** Summerlin, Joe <summerlin.joe@epa.gov>; Schaedle, Candi <Schaedle.Candi@epa.gov>; Gerdes, Jason <Gerdes.Jason@epa.gov>; Aumann, Ethan <Aumann.Ethan@epa.gov>; Price, Kimeka <Price.Kimeka@epa.gov>  
**Cc:** Westlake, Kenneth <westlake.kenneth@epa.gov>  
**Subject:** FW: nepa\_policies\_procedures DRAFT (all mark-ups Feb 2016).docx

Policies and Procedures Manual workgroup: Please read the 2/2016 draft version of the manual prior to the call on Thursday, 3/21 at 2:00 Central time. I will send a separate scheduler message.  
Ken

---

**From:** Summerlin, Joe  
**Sent:** Monday, March 11, 2019 12:47 PM  
**To:** Westlake, Kenneth <westlake.kenneth@epa.gov>  
**Cc:** Tapp, Joshua <Tapp.Joshua@epa.gov>  
**Subject:** nepa\_policies\_procedures DRAFT (all mark-ups Feb 2016).docx

Ken,

I have taken another look at the document we were working on in 2016. **Ex. 5 Deliberative Process (DP)** Thank you for picking it back up and leading the revision.

# Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Those are the ones off the top of my head. I hope this helps get part of your agenda started.

Thanks!

joe

Message

---

**From:** Suriano, Elaine [Suriano.Elaine@epa.gov]  
**Sent:** 11/8/2018 3:57:20 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** Thks for the info. Regards, E...  
**Attachments:** Fwd: Info only - Fwd: Changes to EPA's Environmental Review Rating Process, Memorandum issued by Brittany Bolen, Associate Administrator, October 22, 2018

Elaine Suriano  
Environmental Scientist  
Office of Federal Activities (2252A)  
WJC South - 7235C  
1200 Penna. Ave., NW  
Washington, DC 20460  
PH 202 564 7162 - FX 202 564 0070  
[suriano.elaine@epa.gov](mailto:suriano.elaine@epa.gov)

Message

---

**From:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Sent:** 11/8/2018 3:55:37 PM  
**To:** Suriano, Elaine [Suriano.Elaine@epa.gov]  
**Subject:** Fwd: Info only - Fwd: Changes to EPA's Environmental Review Rating Process, Memorandum issued by Brittany Bolen, Associate Administrator, October 22, 2018  
**Attachments:** NEPA Ratings Comment Letter (1).pdf; ATT00001.htm

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

Begin forwarded message:

**From:** "Dunning, Connell" <[Dunning.Connell@epa.gov](mailto:Dunning.Connell@epa.gov)>  
**Date:** November 8, 2018 at 7:54:14 AM PST  
**To:** R9-ENF-4-2 <[R9-ENF-4-2@epa.gov](mailto:R9-ENF-4-2@epa.gov)>  
**Subject:** Info only - Fwd: Changes to EPA's Environmental Review Rating Process, Memorandum issued by Brittany Bolen, Associate Administrator, October 22, 2018

FYI.

Another perspective shared regarding discontinuation of ratings.  
Connell

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

Begin forwarded message:

**From:** Debbie Lowe Liang <[debbielowe@gmail.com](mailto:debbielowe@gmail.com)>  
**Date:** November 4, 2018 at 8:16:24 PM PST  
**To:** [Buzzelle.stanley@epa.gov](mailto:Buzzelle.stanley@epa.gov), Connell Dunning <[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)>, [Ruhl.Suzi@epa.gov](mailto:Ruhl.Suzi@epa.gov), Francisco Donez <[donez.francisco@epa.gov](mailto:donez.francisco@epa.gov)>  
**Subject:** Changes to EPA's Environmental Review Rating Process, Memorandum issued by Brittany Bolen, Associate Administrator, October 22, 2018

Connell, Stan, Suzi, and Francisco,

I was part of the team that developed the attached letter re:

Changes to EPA's Environmental Review Rating Process, Memorandum issued by Brittany Bolen, Associate Administrator, October 22, 2018

Debbie



November 2, 2018

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

RE: Changes to EPA's Environmental Review Rating Process, Memorandum issued by  
Brittany Bolen, Associate Administrator, October 22, 2018

The Environmental Protection Network (EPN)<sup>1</sup> and Save EPA<sup>2</sup> are pleased to submit the following letter to express concerns for your consideration on the U.S. Environmental Protection Agency's (EPA) implementation of its review responsibilities under Clean Air Act Section 309 and the National Environmental Policy Act of 1969 (NEPA).

Specifically, we are addressing the changes announced in a memorandum from Associate Administrator Brittany Bolen, dated October 22, 2018, which states that EPA will no longer assign a letter and numerical rating in its comments on reviews conducted by other agencies. We strongly urge that the rating system be continued until EPA has sought public review and comment on both the existing guidance and proposed alternative language which would be used to signal EPA's concerns in its comment letters. EPA's action now leaves a gap which will create confusion and inconsistency, the very things the action sought to avoid.

EPA has played an important role in the implementation of NEPA, providing independent review of both the adequacy of the analysis of impacts and the seriousness of the environmental impacts along with the adequacy of consideration of environmental impact including both the range and substance of alternatives and mitigation. EPA's unique independent review role is mandated in the law and carried out through the preparation of publicly available comment letters. We certainly support efforts to make the environmental review and permitting processes more efficient and effective in advancing the harmony between the human and natural environment that NEPA seeks to achieve.

---

<sup>1</sup> EPN is an organization comprised of over 350 EPA alumni volunteering their time to protect the integrity of EPA, human health and the environment. EPN harnesses the expertise of former EPA career staff and confirmation-level appointees to provide an informed and rigorous defense against current efforts to undermine the protection of public health and the environment

<sup>2</sup> Save EPA is an all-volunteer organization made up of retired and former employees of the EPA.. Its members have expertise in environmental science, law, economics and policy. It is based in Colorado and has members across the country, using their collective expertise to educate and advocate for public health and environmental protection.

The Memorandum of October 22 lays out the following arguments for eliminating the longstanding use of a rating system in EPA comment letters that has been in place since 1984:

1. Federal agencies have greater sophistication now, have improved the quality of draft EISs and find the actual comments more helpful than the ratings.
2. Comment letter wording itself on a proposal that may involve unsatisfactory environmental impacts can be used in the rare instances EPA needs to signal a potential referral to CEQ as well as other terms to convey what has been conveyed in lesser ratings.
3. Elimination of the ratings will, as asserted:
  - 3.1. not lessen environmental protections
  - 3.2. help to focus attention on resolving issues
  - 3.3. address perceptions that ratings are not consistently applied across the agency, and minimize confusion on the part of federal agencies and the public.

We would be interested in seeing the administrative record that supports these assertions. Additionally, we recommend that this record be made public in concert with any proposed alternative approach to clarifying EPA's concerns in comment letters absent a rating.

4. Early engagement is more important than the ratings.

For your consideration:

- (1) **Ratings are not a substitute for comments; they are designed to complement them**  
Ratings have been an effective tool in garnering the attention of senior officials to help resolve issues quickly and thoroughly. While it is not surprising that federal agency officials found actual comments more helpful than the ratings, it is not the purpose of the ratings to substitute for comments. Rather, it is to alert officials as to the level of concern of EPA as both a warning and impetus for fixing the problems and gaps identified in the comments.
- (2) **The absence of immediate, contemporaneous guidance for specific language to be used in lieu of ratings leaves a gap that will create confusion and inconsistency**  
Any EPA substitution of specific wording in its comment letter for the 1984 ratings scheme makes it imperative that EPA provide contemporaneous guidance on what that wording is and means or it risks even more of the problems of inconsistency and/or confusion that EPA is purportedly concerned about. Instead it stops use of the rating scheme and directs OFA to develop guidance and training. This will leave an important gap subject to confusion and inconsistency. We also expect that EPA will continue to express concerns about the adequacy of the assessment, as it has historically done. Without adequate information it is hard to determine what the environmental impacts will be and the adequacy of mitigation for those impacts.

**(3) Prior to elimination of the rating scheme, EPA should provide opportunity for review and comment**

Although the EPA rating system was not embodied either in statute or regulation, it was mandated by longstanding EPA guidance for over thirty years. As such, it is something that other federal agencies, levels of government, and the public have come to rely upon. We believe that in the interest of transparency, and avoidance of inadvertent negative impact that the removal of the rating system as well as proposed alternative language for signaling EPA's overall intent and judgement in regard to a proposed action be given an opportunity for public review and comment. It has been customary under Administrative practice that significant modifications to guidance be informed by public review and comment. Moreover, we believe that by mandating EPA comments available to the public via the Clean Air Act Section 309, Congress clearly expressed its intent to describe a public interest in the manner in which EPA characterizes its comments. Changing long standing guidance by Memorandum without public notice and comment is contrary to the principles of good government.

**(4) The interplay between review responsibilities of EPA between the Clean Air Act Section 309 and NEPA appears to be mischaracterized**

The introductory paragraphs recognize that EPA's review mandate under the Clean Air Act section 309 is broader than the review role provided to EPA under NEPA and CEQ implementing regulations. However it seems to suggest that this role is limited to commenting on all federal EIS documents. This is not our understanding of the scope of EPA's authority and mandate, which would also include the full range of impacts and, at EPA's discretion, any proposed federal agency action that warrants review, including those that were categorized as warranting only an Environmental Assessment or categorical exclusion.<sup>3</sup>

**(5) The unique value of ratings to garner high level attention to address problems and secure consistency should not be overlooked**

Adverse ratings of a draft EIS have often been a very effective tool in getting an agency's attention to an inadequate EIS or an environmentally unacceptable project. Adverse ratings have fostered effective agency response and improved examination of the environmental impacts of a project and in many cases resulted in additional measures being taken to mitigate those effects. Adverse ratings uniquely get the attention of upper management in agencies. It was a tool that EPA used very judiciously but in those rare instances it sent a powerful message. Furthermore, discussion within EPA between headquarters and regions over ratings helps provide national consistency in ratings and comments.

There is a suggestion that providing a rating impedes cooperation and early engagement. Our experience is the opposite. Agencies have wanted to cooperate early to address EPA's concerns and avoid bad ratings later on.

---

<sup>3</sup> See [https://www.energy.gov/sites/prod/files/G-EPA-309\\_caa\\_nepa.pdf](https://www.energy.gov/sites/prod/files/G-EPA-309_caa_nepa.pdf)

There also is a public interest in both EPA comments and ratings. Ratings provide a very useful tool for the public because a rating is a simple, short hand signal of how EPA view the project's impacts and the adequacy of the EIS.

Ultimately the goal of the process is to improve Federal Agency decision making and ensure it has the benefit of independent EPA Review and Comment. It will always be a challenge for EPA to craft a good, compelling and articulate comment letter well supported by science, within the timeframes of the public comment period. This policy change deserves further input and consideration before changing years of practice. An emphasis on early engagement by EPA with proposed actions of other federal agencies is important but with the reduction in EPA resources for this purpose it is doubtful that it can be accomplished.

We strongly urge that the October 22 policy change: a) be put on hold until it can be thoroughly vetted through public review and comment with a full explanation of EPA's basis for the conclusions contained in the October 22 memorandum, and b) be accompanied by a discussion of any alternative means that EPA is considering for clearly conveying the intention of EPA comments on both environmental impact and adequacy of analysis when issued and open for comment.

Thank you for your consideration.

Respectfully submitted,

Michelle Roos  
Executive Director  
Environmental Protection Network  
[michelle.roos@environmentalprotectionnetwork.org](mailto:michelle.roos@environmentalprotectionnetwork.org)  
[www.environmentalprotectionnetwork.org](http://www.environmentalprotectionnetwork.org)  
(202) 656-6229

cc: Cheryl Wasserman, Lead, EPN NEPA and Infrastructure Team  
Carol Campbell, Co-Director, Save EPA, [saveepa@gmail.com](mailto:saveepa@gmail.com), 720-281-2677

Message

---

**From:** Gerdes, Jason [Gerdes.Jason@epa.gov]  
**Sent:** 9/4/2019 8:36:12 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** FW: 309 Manual workgroup  
**Attachments:** nepa\_policies\_procedures DRAFT (all mark-ups Feb 2016).doc; nepa\_policies\_procedures DRAFT (clean version).doc

Connell,

Just in case this is helpful to you, I have attached the Word version of the Policy and Procedures manual that Candi and Joe had worked on before the convening of this year's workgroup.

Jason

---

**From:** Westlake, Kenneth <westlake.kenneth@epa.gov>  
**Sent:** Friday, March 08, 2019 4:10 PM  
**To:** Schaedle, Candi <Schaedle.Candi@epa.gov>; Gerdes, Jason <Gerdes.Jason@epa.gov>; Summerlin, Joe <summerlin.joe@epa.gov>; Aumann, Ethan <Aumann.Ethan@epa.gov>; Price, Kimeka <Price.Kimeka@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>  
**Subject:** 309 Manual workgroup

Policies and Procedures workgroup,

# Ex. 5 Deliberative Process (DP)

Thanks for volunteering for this effort.  
Ken Westlake [westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov)  
312-886-2910

Message

---

**From:** Timmermann, Timothy [Timmermann.Timothy@epa.gov]  
**Sent:** 10/23/2018 2:46:13 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** RE: 309 memo

Helpful comments

Timothy L. Timmermann, Director  
Office of Environmental Review  
EPA New England-Region 1  
5 Post Office Square, Suite 100  
Mail Code OEP 06-3  
Boston, MA 02109-3912

Email: [timmermann.timothy@epa.gov](mailto:timmermann.timothy@epa.gov)  
Telephone: 617-918-1025  
E-Fax: 617-918-0025

---

**From:** Dunning, Connell  
**Sent:** Monday, October 22, 2018 4:54 PM  
**To:** Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Trice, Jessica <Trice.Jessica@epa.gov>; Roemele, Julie <Roemele.Julie@epa.gov>; Barnhart, Megan <barnhart.megan@epa.gov>; Hessert, Aimee <Hessert.Aimee@epa.gov>; Suriano, Elaine <Suriano.Elaine@epa.gov>; Rountree, Marthea <Rountree.Marthea@epa.gov>; Schaedle, Candi <Schaedle.Candi@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>  
**Subject:** RE: 309 memo

Thanks Kelly.

A few suggested edits and notes:

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Thanks for asking for our feedback!  
Connell

\*\*\*\*\*

Connell Dunning  
Environmental Review Section (ENF 4-2)  
US EPA Region IX, Pacific Southwest  
75 Hawthorne St, SF CA 94105  
dunning.connell@epa.gov  
phone - 415-947-4161

*Pollinators, including bees, butterflies, birds, and bats, are an important part of our ecosystem and food supply chain. Plants, like fruits and vegetables, need bees and other pollinators to help them grow.*

Find out how EPA is protecting pollinators: <https://www.epa.gov/pollinator-protection>

---

**From:** Knight, Kelly  
**Sent:** Monday, October 22, 2018 1:01 PM  
**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Trice, Jessica <Trice.Jessica@epa.gov>; Roemele, Julie <Roemele.Julie@epa.gov>; Barnhart, Megan <barnhart.megan@epa.gov>; Hessert, Aimee <Hessert.Aimee@epa.gov>; Suriano, Elaine <Suriano.Elaine@epa.gov>; Rountree, Marthea <Rountree.Marthea@epa.gov>; Schaedle, Candi <Schaedle.Candi@epa.gov>  
**Subject:** 309 memo

All – still don't have the signed memo. Anticipating it by 5pm. We will need to include a paragraph similar to the below in our letters. Suggested edits are welcome.



# Ex. 5 Deliberative Process (DP)

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)  

Ex. 6 Personal Privacy (PP)

(cell)



Message

**From:** Plenys, Thomas [Plenys.Thomas@epa.gov]  
**Sent:** 10/22/2018 11:03:01 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** RE: Changes to EPA's Environmental Review Rating Process - EPA will no longer provide a rating on NEPA Draft EIS Comment Letters

It's now posted on NEPA site....

<https://www.epa.gov/nepa/environmental-impact-statement-rating-system-criteria>

---

**From:** Dunning, Connell

**Sent:** Monday, October 22, 2018 3:37 PM

**To:** R9-ENF-4-2 <R9-ENF-4-2@epa.gov>; Sachs, Carol <Sachs.Carol@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Ziegler, Sam <Ziegler.Sam@epa.gov>; Torres, Tomas <Torres.Tomas@epa.gov>; Scott, Jeff <Scott.Jeff@epa.gov>; Manzanilla, Enrique <Manzanilla.Enrique@epa.gov>; Ebbert, Laura <Ebbert.Laura@epa.gov>; OConnor, Karina <OConnor.Karina@epa.gov>; Lee, Anita <Lee.Anita@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>; Davidson, Ken <Davidson.Ken@epa.gov>; Smith, DavidW <Smith.DavidW@epa.gov>; Siu, Jennifer <Siu.Jennifer@epa.gov>; Ross, Brian <Ross.Brian@epa.gov>; ROSETTI, LEANA <Rosetti.Leana@epa.gov>; Scianni, Melissa <Scianni.Melissa@epa.gov>; Fitzgerald, Megan <fitzgerald.megan@epa.gov>; Morgan, Joseph <Morgan.Joseph@epa.gov>; Ota, Allan <Ota.Allan@epa.gov>; Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Mahdavi, Sarvy <Mahdavi.Sarvy@epa.gov>; Rios, Gerardo <Rios.Gerardo@epa.gov>; McCarroll, John <McCarroll.John@epa.gov>; Ty, Fatima <Ty.Fatima@epa.gov>; LEONIDO-JOHN, STEVEN <Leonido-John.Steven@epa.gov>; Aguirre, Hector <Aguirre.Hector@epa.gov>; Blake, Ellen <Blake.Ellen@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Hage, Christopher <hage.christopher@epa.gov>

**Subject:** FW: Changes to EPA's Environmental Review Rating Process - EPA will no longer provide a rating on NEPA Draft EIS Comment Letters

FYI –

As of today, per Office of Policy direction, EPA will no longer provide an alpha-numeric rating following the review of other agency EISs, as has been our normal practice. We will continue to review Draft EISs, per CAA Section 309, and make those letters public via the EPA eNEPA website.

The attached memo to all RAs was signed today by Brittany Bolen, Office of Policy, and her email to Mike is below.

## Ex. 5 Deliberative Process (DP)

Please share with R9 offices that have a role in providing expertise/assistance in the drafting of NEPA Comment letters.

Thank you,  
Connell

\*\*\*\*\*

Connell Dunning

Environmental Review Section (ENF 4-2)  
US EPA Region IX, Pacific Southwest  
75 Hawthorne St, SF CA 94105  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)  
phone - 415-947-4161

*Pollinators, including bees, butterflies, birds, and bats, are an important part of our ecosystem and food supply chain. Plants, like fruits and vegetables, need bees and other pollinators to help them grow.*

Find out how EPA is protecting pollinators: <https://www.epa.gov/pollinator-protection>

**From:** Tomiak, Robert  
**Sent:** Monday, October 22, 2018 3:21 PM  
**To:** Dunning, Connell <[Dunning.Connell@epa.gov](mailto:Dunning.Connell@epa.gov)>  
**Subject:** Fwd: Changes to EPA's Environmental Review Rating Process

Meant to add you as well.....

Thanks, Rob

Begin forwarded message:

**From:** "Tomiak, Robert" <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>  
**Date:** October 22, 2018 at 6:19:59 PM EDT  
**To:** "Filippelli, John" <[Filippelli.John@epa.gov](mailto:Filippelli.John@epa.gov)>, "Smidinger, Betsy" <[Smidinger.Betsy@epa.gov](mailto:Smidinger.Betsy@epa.gov)>, "Allnutt, David" <[Allnutt.David@epa.gov](mailto:Allnutt.David@epa.gov)>, "Tapia, Cecilia" <[Tapia.Cecilia@epa.gov](mailto:Tapia.Cecilia@epa.gov)>, "Goforth, Kathleen" <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>, "Timmermann, Timothy" <[Timmermann.Timothy@epa.gov](mailto:Timmermann.Timothy@epa.gov)>, "Seager, Cheryl" <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>, "Forren, John" <[Forren.John@epa.gov](mailto:Forren.John@epa.gov)>, "Westlake, Kenneth" <[westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov)>, "Strobel, Philip" <[Strobel.Philip@epa.gov](mailto:Strobel.Philip@epa.gov)>, "Lapp, Jeffrey" <[lapp.jeffrey@epa.gov](mailto:lapp.jeffrey@epa.gov)>, "Mitchell, Judy-Ann" <[Mitchell.Judy-Ann@epa.gov](mailto:Mitchell.Judy-Ann@epa.gov)>, "Monell, Carol" <[Monell.Carol@epa.gov](mailto:Monell.Carol@epa.gov)>, "Torres, Ramon" <[Torres.Ramon@epa.gov](mailto:Torres.Ramon@epa.gov)>, "Walts, Alan" <[walts.alan@epa.gov](mailto:walts.alan@epa.gov)>, "Saunders, Jerry" <[Saunders.Jerry@epa.gov](mailto:Saunders.Jerry@epa.gov)>, "Tapp, Joshua" <[Tapp.Joshua@epa.gov](mailto:Tapp.Joshua@epa.gov)>, "Anderson-Carnahan, Linda" <[Anderson-Carnahan.Linda@epa.gov](mailto:Anderson-Carnahan.Linda@epa.gov)>  
**Cc:** "Knight, Kelly" <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>, "Hoppe, Allison" <[hoppe.allison@epa.gov](mailto:hoppe.allison@epa.gov)>, "Marshall, Tom" <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>  
**Subject:** Fwd: Changes to EPA's Environmental Review Rating Process



FYI....and immediate execution. Please help disseminate this more broadly.

Thanks, Rob

Begin forwarded message:

**From:** "Bolen, Brittany" <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>  
**Date:** October 22, 2018 at 5:42:30 PM EDT  
**To:** "Benevento, Douglas" <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>, "Dunn, Alexandra" <[dunn.alexandra@epa.gov](mailto:dunn.alexandra@epa.gov)>, "Glenn, Trey" <[Glenn.Trey@epa.gov](mailto:Glenn.Trey@epa.gov)>, "Gulliford, Jim" <[gulliford.jim@epa.gov](mailto:gulliford.jim@epa.gov)>, "Hladick, Christopher" <[hladick.christopher@epa.gov](mailto:hladick.christopher@epa.gov)>, "Idsal, Anne" <[idsal.anne@epa.gov](mailto:idsal.anne@epa.gov)>, "Lopez, Peter" <[lopez.peter@epa.gov](mailto:lopez.peter@epa.gov)>, "Servidio, Cosmo"

<Servidio.Cosmo@epa.gov>, "Stepp, Cathy" <stepp.cathy@epa.gov>, "Stoker, Michael B." <stoker.michael@epa.gov>

Cc: "Tomiak, Robert" <tomiak.robert@epa.gov>

**Subject: Changes to EPA's Environmental Review Rating Process**

Colleagues,

Please see attached memo revising EPA's environmental review rating process under NEPA. If you have any questions, please do not hesitate to contact me, or your staff may contact Robert Tomiak, whom I have copied on this email.

Sincerely,

**Brittany Bolen**

Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

[Bolen.Brittany@epa.gov](mailto:Bolen.Brittany@epa.gov)

Message

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 10/18/2018 10:08:45 PM  
**To:** Appleton, Zac [Appleton.Zac@epa.gov]; Plenys, Thomas [Plenys.Thomas@epa.gov]; Gordon, Stephanie (Skophammer) [GORDON.STEPHANIES@EPA.GOV]; KELLY, PATRICKJ [kelly.patrickj@epa.gov]; Capilla, Morgan [capilla.morgan@epa.gov]; Vitulano, Karen [Vitulano.Karen@epa.gov]; Geselbracht, Jeanne [Geselbracht.Jeanne@epa.gov]; Prijatel, Jean [PRIJATEL.JEAN@EPA.GOV]; Gerdes, Jason [Gerdes.Jason@epa.gov]; Munson, James [MUNSON.JAMES@EPA.GOV]; Hoffman, Hugo [Hoffman.Hugo@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; meek, clifton [meek.clifton@epa.gov]; Mulvihill, Carolyn [Mulvihill.Carolyn@epa.gov]; Ardillo, Anne [ARDILLO.ANNE@EPA.GOV]; McPherson, Ann [McPherson.Ann@epa.gov]; Truitt, Roberta [truitt.roberta@epa.gov]  
**Subject:** Fwd: Update re: Ratings

This just in ...

Sent from my iPhone

Begin forwarded message:

**From:** "Knight, Kelly" <knight.kelly@epa.gov>  
**Date:** October 18, 2018 at 2:08:06 PM PDT  
**To:** "Timmermann, Timothy" <Timmermann.Timothy@epa.gov>, "Musumeci, Grace" <Musumeci.Grace@epa.gov>, "Mitchell, Judy-Ann" <Mitchell.Judy-Ann@epa.gov>, "Lapp, Jeffrey" <lapp.jeffrey@epa.gov>, "Rudnick, Barbara" <Rudnick.Barbara@epa.gov>, "Militscher, Chris" <Militscher.Chris@epa.gov>, "Westlake, Kenneth" <westlake.kenneth@epa.gov>, "Houston, Robert" <Houston.Robert@epa.gov>, "Tapp, Joshua" <Tapp.Joshua@epa.gov>, "Strobel, Philip" <Strobel.Philip@epa.gov>, "Schuller, Jennifer" <Schuller.Jennifer@epa.gov>, "Goforth, Kathleen" <Goforth.Kathleen@epa.gov>, "Dunning, Connell" <Dunning.Connell@epa.gov>, "Nogi, Jill" <nogi.jill@epa.gov>  
**Cc:** "Hessert, Aimee" <Hessert.Aimee@epa.gov>, "Hoppe, Allison" <hoppe.allison@epa.gov>  
**Subject:** Update

Just learned that the 309 memo discontinuing the use of the rating system will likely be signed out next week. We will be working on a desk statement for any questions that come in.

Stay tuned.

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)

Ex. 6 Personal Privacy (PP) 1 (cell)

## Bi-Monthly Regional Division Director Call

September 4, 2018: 2:00 pm (EST)

Conference Call: E

### **Ex. 6 Personal Privacy (PP)**

### **Agenda**

- Introductions and Announcements (5 min)
- 309 ratings - Status (5 min)
- Program measures (5 min)
- Regional perspective: (what is working, what is not? what do you need help with?)
  - Region 1 (10 min)
  - Region 3 (10 min)
- NEPA survey (10 min)
- More/Less/Same (5 min)
- Topics for next call (5 min)
- Wrap-up (5 min)

Next call: November 6, 2018: 2:00 (EST)

Message

---

**From:** Westlake, Kenneth [westlake.kenneth@epa.gov]  
**Sent:** 7/12/2018 8:52:20 PM  
**To:** Strobel, Philip [Strobel.Philip@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]  
**CC:** Hessert, Aimee [Hessert.Aimee@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Walts, Alan [walts.alan@epa.gov]  
**Subject:** RE: Revised 309 memo

Thanks, Phil and Jennifer, for sharing your inputs.  
Ken

---

**From:** Strobel, Philip  
**Sent:** Thursday, July 12, 2018 2:59 PM  
**To:** Westlake, Kenneth <westlake.kenneth@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Walts, Alan <walts.alan@epa.gov>  
**Subject:** RE: Revised 309 memo

Thanks Kelly and Ken:  
Here's some additional edits for your consideration (on top of Ken's version).  
Phil and Jennifer

Philip S. Strobel  
Director, NEPA Compliance and Review Program  
US EPA - Region 8 (EPR-N)  
1595 Wynkoop St., Denver, CO 80202  
303-312-6704

---

**From:** Westlake, Kenneth  
**Sent:** Thursday, July 12, 2018 9:41 AM  
**To:** Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Walts, Alan <walts.alan@epa.gov>  
**Subject:** RE: Revised 309 memo

Kelly,

Thanks for the opportunity to comment on this latest version. Region 5's comments and suggested edits are attached. I presume this will be a topic of conversation for our call at 12:20 EST today.

Ken

---

**From:** Knight, Kelly

**Sent:** Thursday, July 12, 2018 5:50 AM

**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>

**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>

**Subject:** Revised 309 memo

Good Morning –

Attached is a revised draft of the 309 memo that incorporates feedback from Byron Brown. Some of the phraseology

## Ex. 5 Deliberative Process (DP)

Thanks -- Kelly

Kelly Knight

Director, NEPA Compliance Division

Environmental Protection Agency

202-564-2141 (office)

Ex. 6 Personal Privacy (PP) 1 (cell)

Message

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 10/30/2018 11:23:48 PM  
**To:** McPherson, Ann [McPherson.Ann@epa.gov]; Ardillo, Anne [ARDILLO.ANNE@EPA.GOV]; Mulvihill, Carolyn [Mulvihill.Carolyn@epa.gov]; meek, clifton [meek.clifton@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Hoffman, Hugo [Hoffman.Hugo@epa.gov]; Munson, James [MUNSON.JAMES@EPA.GOV]; Gerdes, Jason [Gerdes.Jason@epa.gov]; Prijatel, Jean [PRIJATEL.JEAN@EPA.GOV]; Geselbracht, Jeanne [Geselbracht.Jeanne@epa.gov]; Vitulano, Karen [Vitulano.Karen@epa.gov]; Capilla, Morgan [capilla.morgan@epa.gov]; KELLY, PATRICKJ [kelly.patrickj@epa.gov]; Gordon, Stephanie (Skophammer) [GORDON.STEPHANIES@EPA.GOV]; Plenys, Thomas [Plenys.Thomas@epa.gov]; Truitt, Roberta [truitt.roberta@epa.gov]; Appleton, Zac [Appleton.Zac@epa.gov]  
**Subject:** UPDATED CORRECTION RE: URL in the Ratings Language Drafted by HQ

Just realized I neglected to include a minor edit to the tense in the template language. Please use:

## Ex. 5 Deliberative Process (DP)

Thanks, and apologies for the multiple revisions.  
-Kathy

Sent from my iPhone

On Oct 30, 2018, at 2:58 PM, Goforth, Kathleen <Goforth.Kathleen@epa.gov> wrote:

Please include the following text in each of your DEIS comment letters (note corrected URL):

## Ex. 5 Deliberative Process (DP)

Thanks –  
-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Schaedle, Candi  
**Sent:** Tuesday, October 30, 2018 2:52 PM  
**To:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>  
**Cc:** Knight, Kelly <knight.kelly@epa.gov>  
**Subject:** FW: QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Hi Kathy,

Yes, please use the first link that you listed - <https://www.epa.gov/nepa/epa-review-process-under-section-309-clean-air-act>



---

**From:** Knight, Kelly  
**Sent:** Tuesday, October 30, 2018 5:31 PM  
**To:** Schaedle, Candi <[Schaedle.Candi@epa.gov](mailto:Schaedle.Candi@epa.gov)>  
**Subject:** Fwd: QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Can you send the correct link?

Sent from my iPhone

Begin forwarded message:

**From:** "Goforth, Kathleen" <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>  
**Date:** October 30, 2018 at 5:16:14 PM EDT  
**To:** "Knight, Kelly" <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>  
**Subject:** QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Kelly –

## Ex. 5 Deliberative Process (DP)

Thanks -  
-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Prijatel, Jean  
**Sent:** Tuesday, October 30, 2018 12:56 PM  
**To:** Goforth, Kathleen <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>  
**Subject:** URL in the Ratings Language Drafted by HQ

Hi Kathy,

## Ex. 5 Deliberative Process (DP)

# **Ex. 5 Deliberative Process (DP)**

---

Jean Prijatel  
Environmental Review Section  
US Environmental Protection Agency Region 9  
75 Hawthorne St. (ENF 4-2)  
San Francisco, CA 94105-3941  
415-947-4167

Message

---

**From:** Westlake, Kenneth [westlake.kenneth@epa.gov]  
**Sent:** 7/12/2018 8:44:50 PM  
**To:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]  
**CC:** Hessert, Aimee [Hessert.Aimee@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]  
**Subject:** RE: Revised 309 memo

Thanks, Kathy and Connell, for these thoughtful edits.  
Ken

---

**From:** Goforth, Kathleen  
**Sent:** Thursday, July 12, 2018 2:56 PM  
**To:** Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>  
**Subject:** RE: Revised 309 memo

Hi, Kelly –  
Thanks for the opportunity to review this revision. I've added Connell's and my suggested edits to Ken's markup.  
-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Knight, Kelly  
**Sent:** Thursday, July 12, 2018 3:50 AM  
**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>  
**Subject:** Revised 309 memo

Good Morning –

# Ex. 5 Deliberative Process (DP)

Thanks -- Kelly

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)

Ex. 6 Personal Privacy (PP) cell)

Message

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 10/30/2018 9:58:22 PM  
**To:** McPherson, Ann [McPherson.Ann@epa.gov]; Ardillo, Anne [ARDILLO.ANNE@EPA.GOV]; Mulvihill, Carolyn [Mulvihill.Carolyn@epa.gov]; meek, clifton [meek.clifton@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Hoffman, Hugo [Hoffman.Hugo@epa.gov]; Munson, James [MUNSON.JAMES@EPA.GOV]; Gerdes, Jason [Gerdes.Jason@epa.gov]; Prijatel, Jean [PRIJATEL.JEAN@EPA.GOV]; Geselbracht, Jeanne [Geselbracht.Jeanne@epa.gov]; Vitulano, Karen [Vitulano.Karen@epa.gov]; Capilla, Morgan [capilla.morgan@epa.gov]; KELLY, PATRICKJ [kelly.patrickj@epa.gov]; Gordon, Stephanie (Skophammer) [GORDON.STEPHANIES@EPA.GOV]; Plenys, Thomas [Plenys.Thomas@epa.gov]; Truitt, Roberta [truitt.roberta@epa.gov]; Appleton, Zac [Appleton.Zac@epa.gov]  
**Subject:** CORRECTION RE: URL in the Ratings Language Drafted by HQ

Please include the following text in each of your DEIS comment letters (note corrected URL):

## Ex. 5 Deliberative Process (DP)

Thanks –  
-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Schaedle, Candi  
**Sent:** Tuesday, October 30, 2018 2:52 PM  
**To:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>  
**Cc:** Knight, Kelly <knight.kelly@epa.gov>  
**Subject:** FW: QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Hi Kathy,

## Ex. 5 Deliberative Process (DP)

---

**From:** Knight, Kelly  
**Sent:** Tuesday, October 30, 2018 5:31 PM  
**To:** Schaedle, Candi <Schaedle.Candi@epa.gov>  
**Subject:** Fwd: QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Can you send the correct link?

Sent from my iPhone

Begin forwarded message:

**From:** "Goforth, Kathleen" <Goforth.Kathleen@epa.gov>  
**Date:** October 30, 2018 at 5:16:14 PM EDT  
**To:** "Knight, Kelly" <knight.kelly@epa.gov>  
**Subject:** QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Kelly –

## Ex. 5 Deliberative Process (DP)

Thanks -  
-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Prijatel, Jean  
**Sent:** Tuesday, October 30, 2018 12:56 PM  
**To:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>  
**Subject:** URL in the Ratings Language Drafted by HQ

Hi Kathy,

## Ex. 5 Deliberative Process (DP)

---

Jean Prijatel  
Environmental Review Section  
US Environmental Protection Agency Region 9  
75 Hawthorne St. (ENF 4-2)  
San Francisco, CA 94105-3941  
415-947-4167

Message

---

**From:** Hoppe, Allison [hoppe.allison@epa.gov]  
**Sent:** 7/12/2018 8:33:14 PM  
**To:** Strobel, Philip [Strobel.Philip@epa.gov]; Westlake, Kenneth [westlake.kenneth@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]  
**CC:** Hessert, Aimee [Hessert.Aimee@epa.gov]; Walts, Alan [walts.alan@epa.gov]  
**Subject:** RE: Revised 309 memo  
**Attachments:** Draft Memo 309 Rating System 12 July 2018 R-5 comments plus R8 plus OGC.docx

A few additions from OGC.

Thanks, all!

Allison Hoppe  
Attorney Advisor  
American Indian & Alaska Native Special Emphasis Program Manager  
Cross-Cutting Issues Law Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-1912

I am an EPA LGBTQ+ Ally. [Learn more and take the pledge here.](#)  
Pronouns: She/Her/Hers

---

**From:** Strobel, Philip  
**Sent:** Thursday, July 12, 2018 3:59 PM  
**To:** Westlake, Kenneth <westlake.kenneth@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Walts, Alan <walts.alan@epa.gov>  
**Subject:** RE: Revised 309 memo

Thanks Kelly and Ken:  
Here's some additional edits for your consideration (on top of Ken's version).  
Phil and Jennifer

Philip S. Strobel  
Director, NEPA Compliance and Review Program  
US EPA - Region 8 (EPR-N)  
1595 Wynkoop St., Denver, CO 80202  
303-312-6704

---

**From:** Westlake, Kenneth

**Sent:** Thursday, July 12, 2018 9:41 AM

**To:** Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Walts, Alan <walts.alan@epa.gov>

**Subject:** RE: Revised 309 memo

Kelly,

Thanks for the opportunity to comment on this latest version. Region 5's comments and suggested edits are attached. I presume this will be a topic of conversation for our call at 12:20 EST today.

Ken

---

**From:** Knight, Kelly

**Sent:** Thursday, July 12, 2018 5:50 AM

**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>

**Subject:** Revised 309 memo

Good Morning –

Attached is a revised draft of the 309 memo that incorporates feedback from Byron Brown. Some of the phraseology

## Ex. 5 Deliberative Process (DP)

Thanks -- Kelly

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)

Ex. 6 Personal Privacy (PP)

(cell)



Message

---

**From:** Strobel, Philip [Strobel.Philip@epa.gov]  
**Sent:** 7/12/2018 7:59:06 PM  
**To:** Westlake, Kenneth [westlake.kenneth@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]  
**CC:** Hessert, Aimee [Hessert.Aimee@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Walts, Alan [walts.alan@epa.gov]  
**Subject:** RE: Revised 309 memo  
**Attachments:** Draft Memo 309 Rating System 12 July 2018 R-5 comments plus R8.docx

Thanks Kelly and Ken:  
Here's some additional edits for your consideration (on top of Ken's version).  
Phil and Jennifer

Philip S. Strobel  
Director, NEPA Compliance and Review Program  
US EPA - Region 8 (EPR-N)  
1595 Wynkoop St., Denver, CO 80202  
303-312-6704

---

**From:** Westlake, Kenneth  
**Sent:** Thursday, July 12, 2018 9:41 AM  
**To:** Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>; Walts, Alan <walts.alan@epa.gov>  
**Subject:** RE: Revised 309 memo

Kelly,  
Thanks for the opportunity to comment on this latest version. Region 5's comments and suggested edits are attached. I presume this will be a topic of conversation for our call at 12:20 EST today.  
Ken

---

**From:** Knight, Kelly  
**Sent:** Thursday, July 12, 2018 5:50 AM  
**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>  
**Subject:** Revised 309 memo

Good Morning –

Attached is a revised draft of the 309 memo that incorporates feedback from Byron Brown. Some of the phraseology

## **Ex. 5 Deliberative Process (DP)**

Thanks -- Kelly

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)

Ex. 6 Personal Privacy (PP) (cell)

Message

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 10/30/2018 9:26:57 PM  
**To:** Prijatel, Jean [PRIJATEL.JEAN@EPA.GOV]; Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** FW: QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Meant to cc you.

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Goforth, Kathleen  
**Sent:** Tuesday, October 30, 2018 2:16 PM  
**To:** Knight, Kelly <knight.kelly@epa.gov>  
**Subject:** QUICK QUESTION RE: URL in the Ratings Language Drafted by HQ

Kelly –

## Ex. 5 Deliberative Process (DP)

Thanks -  
-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Prijatel, Jean  
**Sent:** Tuesday, October 30, 2018 12:56 PM  
**To:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>  
**Subject:** URL in the Ratings Language Drafted by HQ

Hi Kathy,  
The sentences that HQ would like us to include in our comment letters is:

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

---

Jean Prijatel  
Environmental Review Section  
US Environmental Protection Agency Region 9  
75 Hawthorne St. (ENF 4-2)  
San Francisco, CA 94105-3941  
415-947-4167

Message

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 10/29/2018 11:42:39 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** RE: Please update by COB Thursday - Agencies Contacts for 309 Ratings discontinuation outreach

Go ahead and notify your contacts.

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Dunning, Connell  
**Sent:** Monday, October 29, 2018 4:37 PM  
**To:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>  
**Subject:** Fwd: Please update by COB Thursday - Agencies Contacts for 309 Ratings discontinuation outreach

Do you want transportation team contacts on here? Or can we take care of Caltrans FHWA FTA FRA FAA?

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

Begin forwarded message:

**From:** "Hoffman, Hugo" <[Hoffman.Hugo@epa.gov](mailto:Hoffman.Hugo@epa.gov)>  
**Date:** October 29, 2018 at 3:28:48 PM PDT  
**To:** R9-ENF-4-2 <[R9-ENF-4-2@epa.gov](mailto:R9-ENF-4-2@epa.gov)>  
**Subject:** Please update by COB Thursday - Agencies Contacts for 309 Ratings discontinuation outreach

Hi ERSovians,

In our Mine team meeting today, Kathy asked that we gather update our list of NEPA colleagues in other agencies for email outreach on the ratings discontinuation. My understanding is that Kathy would need updates to the list by to send an email on Friday. Here is the link to a copy of our old list that we used for the nationwide NEPA/309 Survey. Could you update it with additions, subtractions, and updates?

## Ex. 5 Deliberative Process (DP)

Cheers,

Hugo Hoffman  
U.S. Environmental Protection Agency, Region 9

Environmental Review Section (ENF-4-2)  
75 Hawthorne Street  
San Francisco, CA 94105  
telephone: (415) 972-3929 | fax: (415) 947-8026  
[hoffman.hugo@epa.gov](mailto:hoffman.hugo@epa.gov)

Message

---

**From:** Moutoux, Nicole [Moutoux.Nicole@epa.gov]  
**Sent:** 7/12/2018 3:29:52 PM  
**To:** Johnson, Kathleen [Johnson.Kathleen@epa.gov]  
**CC:** Dunning, Connell [Dunning.Connell@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Subject:** FW: Revised 309 memo  
**Attachments:** Draft Memo 309 Rating System 12 July 2018.docx

FYI – This draft memo eliminating ratings is moving forward. It is currently from Brittany Bolen to RAs. We'll keep you posted on timing which I think Kathy and Connell will get more details on later today.

Nicole

*Nicole G. Moutoux*

Assistant Director  
Enforcement Division  
415-972-3012

Cell Ex. 6 Personal Privacy (PP)

---

**From:** Knight, Kelly  
**Sent:** Thursday, July 12, 2018 3:50 AM  
**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>  
**Subject:** Revised 309 memo

Good Morning –

Attached is a revised draft of the 309 memo that incorporates feedback from Byron Brown. Some of the phraseology

## Ex. 5 Deliberative Process (DP)

Thanks -- Kelly

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)

Ex. 6 Personal Privacy (PP) cell)

Message

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 10/29/2018 4:45:00 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** RE: 309 memo

Excellent edits.

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Dunning, Connell  
**Sent:** Monday, October 22, 2018 1:54 PM  
**To:** Knight, Kelly <knight.kelly@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Trice, Jessica <Trice.Jessica@epa.gov>; Roemele, Julie <Roemele.Julie@epa.gov>; Barnhart, Megan <barnhart.megan@epa.gov>; Hessert, Aimee <Hessert.Aimee@epa.gov>; Suriano, Elaine <Suriano.Elaine@epa.gov>; Rountree, Marthea <Rountree.Marthea@epa.gov>; Schaedle, Candi <Schaedle.Candi@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>  
**Subject:** RE: 309 memo

Thanks Kelly.

A few suggested edits and notes:

## Ex. 5 Deliberative Process (DP)



# Ex. 5 Deliberative Process (DP)

Thanks for asking for our feedback!  
Connell

\*\*\*\*\*

Connell Dunning  
Environmental Review Section (ENF 4-2)  
US EPA Region IX, Pacific Southwest  
75 Hawthorne St, SF CA 94105  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)  
phone - 415-947-4161

*Pollinators, including bees, butterflies, birds, and bats, are an important part of our ecosystem and food supply chain. Plants, like fruits and vegetables, need bees and other pollinators to help them grow.*

Find out how EPA is protecting pollinators: <https://www.epa.gov/pollinator-protection>

**From:** Knight, Kelly  
**Sent:** Monday, October 22, 2018 1:01 PM  
**To:** Timmermann, Timothy <[Timmermann.Timothy@epa.gov](mailto:Timmermann.Timothy@epa.gov)>; Musumeci, Grace <[Musumeci.Grace@epa.gov](mailto:Musumeci.Grace@epa.gov)>; Mitchell, Judy-Ann <[Mitchell.Judy-Ann@epa.gov](mailto:Mitchell.Judy-Ann@epa.gov)>; Lapp, Jeffrey <[lapp.jeffrey@epa.gov](mailto:lapp.jeffrey@epa.gov)>; Rudnick, Barbara <[Rudnick.Barbara@epa.gov](mailto:Rudnick.Barbara@epa.gov)>; Militscher, Chris <[Militscher.Chris@epa.gov](mailto:Militscher.Chris@epa.gov)>; Westlake, Kenneth <[westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov)>; Houston, Robert <[Houston.Robert@epa.gov](mailto:Houston.Robert@epa.gov)>; Tapp, Joshua <[Tapp.Joshua@epa.gov](mailto:Tapp.Joshua@epa.gov)>; Strobel, Philip <[Strobel.Philip@epa.gov](mailto:Strobel.Philip@epa.gov)>; Schuller, Jennifer <[Schuller.Jennifer@epa.gov](mailto:Schuller.Jennifer@epa.gov)>; Goforth, Kathleen <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>; Dunning, Connell <[Dunning.Connell@epa.gov](mailto:Dunning.Connell@epa.gov)>; Nogi, Jill <[nogi.jill@epa.gov](mailto:nogi.jill@epa.gov)>  
**Cc:** Trice, Jessica <[Trice.Jessica@epa.gov](mailto:Trice.Jessica@epa.gov)>; Roemele, Julie <[Roemele.Julie@epa.gov](mailto:Roemele.Julie@epa.gov)>; Barnhart, Megan <[barnhart.megan@epa.gov](mailto:barnhart.megan@epa.gov)>; Hessert, Aimee <[Hessert.Aimee@epa.gov](mailto:Hessert.Aimee@epa.gov)>; Suriano, Elaine <[Suriano.Elaine@epa.gov](mailto:Suriano.Elaine@epa.gov)>; Rountree, Marthea <[Rountree.Marthea@epa.gov](mailto:Rountree.Marthea@epa.gov)>; Schaedle, Candi <[Schaedle.Candi@epa.gov](mailto:Schaedle.Candi@epa.gov)>  
**Subject:** 309 memo

All – still don't have the signed memo. Anticipating it by 5pm. We will need to include a paragraph similar to the below in our letters. Suggested edits are welcome.

## Ex. 5 Deliberative Process (DP)



# Ex. 5 Deliberative Process (DP)

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)

Ex. 6 Personal Privacy (PP) Cell)

Message

---

**From:** Vitulano, Karen [Vitulano.Karen@epa.gov]  
**Sent:** 10/25/2018 6:09:43 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** RE: 10/24/'8 – Notes from call - Implementation Directions from HQ-OFA about discontinuing ratings.

Do you have the updated two sentence language for letters now? I'd like to put it in a letter I'll send to Kathy (unless you want to sign for her to lighten her load – she has like 5 letters due on the 5<sup>th</sup> I think).

## Ex. 5 Deliberative Process (DP)

Karen Vitulano  
U.S. Environmental Protection Agency, Region 9  
Environmental Review Section  
75 Hawthorne St. ENF-4-2  
San Francisco, CA 94105  
PHONE 415-947-4178  
FAX 415-947-8026

---

**From:** Dunning, Connell  
**Sent:** Thursday, October 25, 2018 11:02 AM  
**To:** Vitulano, Karen <Vitulano.Karen@epa.gov>  
**Cc:** Goforth, Kathleen <Goforth.Kathleen@epa.gov>  
**Subject:** 10/24/'8 – Notes from call - Implementation Directions from HQ-OFA about discontinuing ratings.

10/24/18 – Implementation Directions from HQ-OFA about discontinuing ratings.

Aimee Hessert led a call about the implementation of not having ratings.

## Ex. 5 Deliberative Process (DP)

# **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

\*\*\*\*\*

Connell Dunning  
Environmental Review Section (ENF 4-2)  
US EPA Region IX, Pacific Southwest  
75 Hawthorne St, SF CA 94105  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)  
phone - 415-947-4161

*Pollinators, including bees, butterflies, birds, and bats, are an important part of our ecosystem and food supply chain. Plants, like fruits and vegetables, need bees and other pollinators to help them grow.*

Find out how EPA is protecting pollinators: <https://www.epa.gov/pollinator-protection>



Message

---

**From:** Knight, Kelly [knight.kelly@epa.gov]  
**Sent:** 10/22/2018 8:01:09 PM  
**To:** Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Westlake, Kenneth [westlake.kenneth@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]  
**CC:** Trice, Jessica [Trice.Jessica@epa.gov]; Roemele, Julie [Roemele.Julie@epa.gov]; Barnhart, Megan [barnhart.megan@epa.gov]; Hessert, Aimee [Hessert.Aimee@epa.gov]; Suriano, Elaine [Suriano.Elaine@epa.gov]; Rountree, Marthea [Rountree.Marthea@epa.gov]; Schaedle, Candi [Schaedle.Candi@epa.gov]  
**Subject:** 309 memo

All – still don't have the signed memo. Anticipating it by 5pm. We will need to include a paragraph similar to the below in our letters. Suggested edits are welcome.

## Ex. 5 Deliberative Process (DP)

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)  

Ex. 6 Personal Privacy (PP)

 1 (cell)

Message

**From:** Anderson, Julie [Anderson.Julie@epa.gov]  
**Sent:** 10/24/2018 5:21:55 PM  
**To:** Brush, Jason [Brush.Jason@epa.gov]  
**CC:** Miller, Amy [Miller.Amy@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Amato, Paul [Amato.Paul@epa.gov]  
**Subject:** RE: Memo on Changes to EPA's Environmental Review Rating Process

No, looks like N **Ex. 5 Deliberative Process (DP)**

**From:** Brush, Jason  
**Sent:** Wednesday, October 24, 2018 7:56 AM  
**To:** Anderson, Julie <Anderson.Julie@epa.gov>  
**Cc:** Miller, Amy <Miller.Amy@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>  
**Subject:** Re: Memo on Changes to EPA's Environmental Review Rating Process

Hey Julie **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)** Have you heard anything out of R9 OPA on this topic yet?

Sent from my iPhone

On Oct 24, 2018, at 7:10 AM, Dunning, Connell <Dunning.Connell@epa.gov> wrote:

I guess so!  
I haven't received anything else yet...  
Connell

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

On Oct 24, 2018, at 7:05 AM, Miller, Amy <Miller.Amy@epa.gov> wrote:

Official EPA announcement????

Amy C. Miller  
Acting Director, Enforcement Division  
U.S. Environmental Protection Agency, Region 9

Begin forwarded message:

**From:** "Zito, Kelly" <ZITO.KELLY@EPA.GOV>  
**Date:** October 24, 2018 at 7:03:31 AM PDT  
**To:** "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Strauss, Alexis" <Strauss.Alexis@epa.gov>, "Miller, Amy" <Miller.Amy@epa.gov>  
**Subject:** Fwd: Memo on Changes to EPA's Environmental Review Rating Process

Sent from my iPhone

Begin forwarded message:

**From:** "Grantham, Nancy" <Grantham.Nancy@epa.gov>  
**Date:** October 24, 2018 at 3:22:09 AM PDT  
**To:** Regional Public Affairs Directors  
<Regional\_Public\_Affairs\_Directors@epa.gov>  
**Subject:** Fwd: Memo on Changes to EPA's  
Environmental Review Rating Process

Sent from my iPad

Begin forwarded message:

**From:** "Germann, Sandy"  
<Germann.Sandy@epa.gov>  
**Date:** October 23, 2018 at 3:20:09 PM  
EDT  
**To:** Regional Public Affairs Directors  
<Regional\_Public\_Affairs\_Directors@ep  
a.gov>, HQ Communications Directors  
<HQCommunicationsDirectors@epa.go  
v>  
**Cc:** "Grantham, Nancy"  
<Grantham.Nancy@epa.gov>,  
"Richardson, RobinH"  
<Richardson.RobinH@epa.gov>  
**Subject:** Memo on Changes to EPA's  
Environmental Review Rating Process

All, As noted on the call just now, here's  
the link to the memo signed yesterday:  
[https://www.epa.gov/sites/production/  
files/2018-  
10/documents/memorandum\\_on\\_chan  
ges\\_to\\_epas\\_environmental\\_review\\_ra  
ting\\_process.pdf](https://www.epa.gov/sites/production/files/2018-10/documents/memorandum_on_changes_to_epas_environmental_review_rating_process.pdf)

For more information on this process:  
[https://www.epa.gov/nepa/epa-  
review-process-under-section-309-  
clean-air-act](https://www.epa.gov/nepa/epa-review-process-under-section-309-clean-air-act)

Sandy Germann  
US EPA Office of Policy  
202-631-0272  
[germann.sandy@epa.gov](mailto:germann.sandy@epa.gov)





**From:** Vitulano, Karen [Vitulano.Karen@epa.gov]  
**Sent:** 8/15/2018 10:55:23 PM  
**To:** Appleton, Zac [Appleton.Zac@epa.gov]; Ardillo, Anne [ARDILLO.ANNE@EPA.GOV]; Capilla, Morgan [capilla.morgan@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Gerdes, Jason [Gerdes.Jason@epa.gov]; Geselbracht, Jeanne [Geselbracht.Jeanne@epa.gov]; Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Gordon, Stephanie (Skophammer) [GORDON.STEPHANIES@EPA.GOV]; Hoffman, Hugo [Hoffman.Hugo@epa.gov]; KELLY, PATRICKJ [kelly.patrickj@epa.gov]; McPherson, Ann [McPherson.Ann@epa.gov]; meek, clifton [meek.clifton@epa.gov]; Mulvihill, Carolyn [Mulvihill.Carolyn@epa.gov]; Munson, James [MUNSON.JAMES@EPA.GOV]; Plenys, Thomas [Plenys.Thomas@epa.gov]; Prijatel, Jean [PRIJATEL.JEAN@EPA.GOV]; Sachs, Carol [Sachs.Carol@epa.gov]; Vitulano, Karen [Vitulano.Karen@epa.gov]  
**Subject:** RE: 309 ratings + a legislative history of 309

## Ex. 5 Deliberative Process (DP)

### *C. 1970: Creating an Institutional Watchdog*

The glowing Congressional assessments of December 1969 soon began to pale in light of actual experience. Many agencies simply failed to appreciate the new procedural and substantive demands made by NEPA. The environmental agencies, moreover, appeared either unable or unwilling to counter the resistance offered by older and stronger components of the executive branch. Out of sheer exasperation, therefore, Congress enacted section 309 of the Clean Air Act Amendments of 1970 which significantly augmented NEPA's previously inadequate provision for administrative oversight. Although the legislative history of section 309 is sparse, it does reveal the pressing need, as perceived by Congress, for an institutional arrangement which would continuously and forcefully police federal action for compliance with NEPA.

By the summer of 1970, a number of Senators had become skeptical about the efficacy of the consultation and commenting mechanism established by section 102 of NEPA. Their concern surfaced in the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works during its consideration of proposed amendments to the Clean Air Act. Although neither the original bills nor the hearings addressed the problem of overseeing the implementation of NEPA, the bill which the subcommittee, chaired by Senator Muskie, eventually submitted to the full committee did.

The subcommittee's approach to the problem, however, was not comprehensive. The bill required the Secretary of Health, Education and Welfare (HEW) to review the air pollution aspects of any environmental impact statement prepared by the federal government. In the event that any such "detailed statement" was found "unsatisfactory from the standpoint of public health or welfare or environmental quality," the Secretary was ordered to refer the matter to CEQ, which would make a recommendation to the President.<sup>42</sup> The bill, therefore, was apparently limited to an evaluation of the air pollution impacts associated with a particular federal proposal. Nevertheless, the subcommittee's bill did require that such a review take place, regardless of whether the agency contemplating action had requested it, and also provided an explicit avenue for elevating a dispute over an EIS to the level of CEQ.

Within a month, the full committee reported its bill to the Senate.<sup>43</sup> The bill retained this new, but as yet narrow, approach to NEPA review and oversight. In discussing the provision, the committee declared that "[m]ission-oriented agencies often lack the expertise to give adequate evaluation to the environmental impact of their own activities." NEPA, moreover, did not necessarily remedy this situation since it did not "assure that Federal

environmental agencies [would] effectively participate in the decision-making process." 147 Thus the committee believed it necessary to craft an explicit statutory provision requiring an environmental agency to review the environmental merits of various impact statements and to refer "unsatisfactory" statements to CEQ.

The tone of the committee's report suggests that it would have liked to have extended this form of review and oversight to include the entire panoply of environmental matters. The committee, however, was constrained by the limited jurisdiction of HEW. Consequently, the scope of this review was confined to matters "directly or indirectly" related to air pollution. So styled, the forerunner to section 309 was passed by the Senate on September 22, 1970 as part of the Clean Air Act Amendments. Since the House had already approved a different version of the bill, the House and Senate bills were referred to conference.

The conference committee worked hard and long. One factor contributing to the difficulties faced by the conference was the presence of many provisions in the Senate bill having no counterpart in the House bill. One such provision was the Senate's version of section 309. In addition, it soon became obvious that the conferees were formulating a much more comprehensive system of administrative oversight.

When section 309 finally emerged from conference on December 17, 1970, it had been radically refashioned. With the advent of the United States Environmental Protection Agency on December 2, 1970, the conferees were no longer confined by the rather narrow jurisdiction which HEW had possessed. As a result, the conference version of section 309, which was ultimately enacted into law, ordered EPA to comment in writing on all federal actions relating to EPA's duties and responsibilities including all actions which require the preparation of an impact statement. EPA's scope of authority goes far beyond the limited horizons of clean air. In fact, EPA's authority-which includes air, water, solid waste, pesticides, radiation, drinking water, and noise- is so expansive that it encompasses virtually all environmental concerns.

In addition to casting a broad net over the actions subject to EPA review, section 309 clearly required EPA to evaluate the environmental merits of federal action. In doing so, the conference had dropped the Senate's language which would have limited section 309 review to an evaluation of impact statements alone.<sup>162</sup> Instead, the conference version of section 309 explicitly directed EPA to comment, *inter alia*, on "any major Federal agency action" to which NEPA applies. <sup>163</sup> If any such "action" is found "unsatisfactory from the standpoint of public health or welfare or environmental quality," EPA must publish the finding and refer the matter to CEQ.

While the conference report confirms the shift in focus from substantive review of impact statements to review aimed at the merits of federal action, it sheds little light on why the conferees transformed a rather sleepy provision into such a remarkable tool. During the course of the conference, however, the Senate Public Works Committee began hearings on the confirmation of William Ruckelshaus as the first Administrator of EPA. The first day of those hearings-with eight of the nine Senate conferees in attendance produced a record which, perhaps fortuitously, contains the clearest expression of what the conference hoped to gain from section 309.

From the start, it was obvious that Senator Muskie was alarmed about the lackadaisical way in which agencies had approached their consultation obligations under section 102 of NEPA. His alarm stemmed, at least in part, from the comments made on the draft EIS that the Department of Transportation had prepared for the proposed supersonic transport (SST). Since the Senate was about to debate the appropriations bill for the SST, Senator Muskie had requested a copy of the comments which the federal environmental agencies had submitted on the proposal. The request, however, was denied; the comments had been oral and thus were unavailable. Distressed by this flippant conduct, Senator Muskie angrily charged that the NEPA consultation process "[had] been submerged and . . . given second place." This sorry state of affairs certainly did not comport with the intent of the consultation process as an effective external policing mechanism. Senator Muskie, therefore, soon turned his attention to section 309 which he viewed as a remedy for what seemingly had been less than vigorous external review. Section 309, according to Senator Muskie, made EPA "a self-starter, whenever you, unilaterally, see an environmental risk. You are given the responsibility to raise the red flag." EPA's role, therefore, was to be an environmental "gadfly" in order "to restrain or . . . to prevent [even] an ongoing [federal] activity if, in [the agency's judgment], there is an unfortunate environmental impact." In other words, section 309 was more than just a device to assure that mission-oriented agencies would have the benefit of EPA's environmental expertise. It was designed to create an advocate within the executive branch that would blow the whistle on harmful

environmental actions and press the case against such actions all the way to the Executive Office of the President in the form of CEQ.

None of the other Senate conferees who were present objected to Senator Muskie's characterization of section 309. Furthermore, nothing new was added to the discussion of section 309 during the floor debates on the Clean Air Act Amendments. During the Senate debate, Senator Muskie was content to emphasize that EPA review would focus on "major federal actions" that affect the environment, as well as impact statements, and that EPA's comments would be made public when the agency's review was completed. So construed, the Senate passed the bill. In the House, the subject of section 309 was never broached.". That chamber approved the bill without delay, and section 309 soon became law.

From [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2534457](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534457)

\*\*\*\*\*

Karen Vitulano  
U.S. Environmental Protection Agency, Region 9  
Environmental Review Section  
75 Hawthorne St. ENF-4-2  
San Francisco, CA 94105  
PHONE 415-947-4178  
FAX 415-947-8026

---

**From:** Goforth, Kathleen  
**Sent:** Wednesday, August 15, 2018 2:52 PM  
**To:** Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; McPherson, Ann <McPherson.Ann@epa.gov>; Ardillo, Anne <ARDILLO.ANNE@EPA.GOV>; Mulvihill, Carolyn <Mulvihill.Carolyn@epa.gov>; meek, clifton <meek.clifton@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Hoffman, Hugo <Hoffman.Hugo@epa.gov>; Munson, James <MUNSON.JAMES@EPA.GOV>; Gerdes, Jason <Gerdes.Jason@epa.gov>; Prijatel, Jean <PRIJATEL.JEAN@EPA.GOV>; Geselbracht, Jeanne <Geselbracht.Jeanne@epa.gov>; Vitulano, Karen <Vitulano.Karen@epa.gov>; Capilla, Morgan <capilla.morgan@epa.gov>; KELLY, PATRICKJ <kelly.patrickj@epa.gov>; Gordon, Stephanie (Skophammer) <GORDON.STEPHANIES@EPA.GOV>; Plenys, Thomas <Plenys.Thomas@epa.gov>; Appleton, Zac <Appleton.Zac@epa.gov>  
**Subject:** FW: 309 ratings

**Ex. 5 Deliberative Process (DP)**

I'll forward the options paper and draft memo in a separate message.)

Stay tuned.

-Kathy

---

**From:** Knight, Kelly  
**Sent:** Wednesday, August 15, 2018 12:15 PM  
**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Subject:** 309 ratings

**Ex. 5 Deliberative Process (DP)**

Will keep you posted.

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)  

Ex. 6 Personal Privacy (PP)

 (cell)

Message

---

**From:** Capilla, Morgan [capilla.morgan@epa.gov]  
**Sent:** 8/9/2018 11:30:08 PM  
**To:** R9-ENF-4-2 [R9-ENF-4-2@epa.gov]; Sachs, Carol [Sachs.Carol@epa.gov]  
**Subject:** Section Meeting Notes, 8/9/18

Here are the notes from today's section meeting. Feel free to make corrections if I left something out or made a mistake.

**Section Meeting Notes, 8.9.18**

**Managers Meeting**

- RA updates

## Ex. 5 Deliberative Process (DP)

- 
- 
- 
- 
- 
- 
- 
- 

## Ex. 5 Deliberative Process (DP)

**Kathy's Korner**

- Regions' call with Kelly

## Ex. 5 Deliberative Process (DP)

Topics to suggest for next week's national NEPA/309 call

# Ex. 5 Deliberative Process (DP)

## Close-out Procedures for NEPADS and eNEPA

- **Ex. 5 Deliberative Process (DP)**

## NEPA-led All-Hands in September

- Potential topics:

# Ex. 5 Deliberative Process (DP)

## Roundtable

- 
- 
- 
- **Ex. 5 Deliberative Process (DP)**
- 

---

Morgan Capilla  
Environmental Review Section  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (ENF-4-2)  
San Francisco, CA 94105  
[capilla.morgan@epa.gov](mailto:capilla.morgan@epa.gov) | (415) 972-3504

Message

---

**From:** Truitt, Roberta [truitt.roberta@epa.gov]  
**Sent:** 11/9/2018 8:48:54 PM  
**To:** R9-ENF-4-2 [R9-ENF-4-2@epa.gov]  
**Subject:** Staff Meeting Notes Nov 8, 2018

Manager's Meeting

- There wasn't one this week.

Section 309 Division Directors Meeting with Rob Tomiak

# Ex. 5 Deliberative Process (DP)



# **Ex. 5 Deliberative Process (DP)**

Tom will be the facilitator at next Thursday's 11/15 staff meeting.

Robin Truitt  
NOWCC, Environmental Review Section  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street, ENF-4-2)  
San Francisco, CA 94105-3941  
(415) 972-3742

Managers Meeting

## **Ex. 5 Deliberative Process (DP)**

Regional Managers with Kelly

## **Ex. 5 Deliberative Process (DP)**

All Hands LEAN Presentation

## **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Favorite neighborhood lunch dish – all

## **Ex. 5 Deliberative Process (DP)**

Roundtable

- 
- 
- 
- 
- 

## **Ex. 5 Deliberative Process (DP)**

Message

---

**From:** Ardillo, Anne [ARDILLO.ANNE@EPA.GOV]  
**Sent:** 6/26/2018 2:36:50 PM  
**To:** Dunning, Connell [Dunning.Connell@epa.gov]  
**Subject:** RE: Section meeting notes - please edit or add if warranted

Thanks Connell, sorry for the errors

---

**From:** Dunning, Connell  
**Sent:** Thursday, June 21, 2018 3:24 PM  
**To:** Ardillo, Anne <ARDILLO.ANNE@EPA.GOV>  
**Cc:** R9-ENF-4-2 <R9-ENF-4-2@epa.gov>; Sachs, Carol <Sachs.Carol@epa.gov>  
**Subject:** Re: Section meeting notes - please edit or add if warranted

Thanks Ann for these great notes!  
Two name spelling corrections:  
Ted Boling and Michael Drummond are the two CEQ contacts I referenced.  
Thanks,  
Connell

---

Connell Dunning  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-947-4161  
[dunning.connell@epa.gov](mailto:dunning.connell@epa.gov)

On Jun 21, 2018, at 2:44 PM, Ardillo, Anne <[ARDILLO.ANNE@EPA.GOV](mailto:ARDILLO.ANNE@EPA.GOV)> wrote:

## Ex. 5 Deliberative Process (DP)

Managers mtg (Connell)

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

CEQ federal NEPA contacts call

## Ex. 5 Deliberative Process (DP)

If you have an idea for training please let Kathy and Connell know, we may have funds

Placeholder – no one attended the Capstone training session, maybe next meeting will discuss

Roundtable

## Ex. 5 Deliberative Process (DP)

Message

---

**From:** Westlake, Kenneth [westlake.kenneth@epa.gov]  
**Sent:** 6/22/2018 10:27:46 PM  
**To:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]; Gentile, Laura [Gentile.Laura@epa.gov]; Timmermann, Timothy [Timmermann.Timothy@epa.gov]; Musumeci, Grace [Musumeci.Grace@epa.gov]; Mitchell, Judy-Ann [Mitchell.Judy-Ann@epa.gov]; Lapp, Jeffrey [lapp.jeffrey@epa.gov]; Rudnick, Barbara [Rudnick.Barbara@epa.gov]; Militscher, Chris [Militscher.Chris@epa.gov]; Houston, Robert [Houston.Robert@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; Strobel, Philip [Strobel.Philip@epa.gov]; Schuller, Jennifer [Schuller.Jennifer@epa.gov]; Dunning, Connell [Dunning.Connell@epa.gov]; Moutoux, Nicole [Moutoux.Nicole@epa.gov]; Nogi, Jill [nogi.jill@epa.gov]  
**CC:** Hessert, Aimee [Hessert.Aimee@epa.gov]; Knight, Kelly [knight.kelly@epa.gov]  
**Subject:** RE: For review by Friday COB -- Draft Implementation Plan for OFD  
**Attachments:** 2018-06-18\_R9EDits\_EPA OFD Implementation Plan Jun11 Draft kmg, R5.doc.docx

Laura,

Thanks for the opportunity to review this draft. I reviewed the version that Kathy Goforth and Connell Dunning in Region 9 annotated and added a few very minor edits of my own. Enjoy your weekend.

Ken

---

**From:** Goforth, Kathleen  
**Sent:** Friday, June 22, 2018 3:25 PM  
**To:** Gentile, Laura <Gentile.Laura@epa.gov>; Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>  
**Cc:** Hessert, Aimee <Hessert.Aimee@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>  
**Subject:** RE: For review by Friday COB -- Draft Implementation Plan for OFD

Hi, Laura –

Thanks for the opportunity to review. Connell and I made a few suggested edits in the attached, mostly for internal consistency and style.

Have a nice weekend!

-Kathy

Kathleen Martyn Goforth, Manager  
Environmental Review Section (ENF-4-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3521

---

**From:** Gentile, Laura  
**Sent:** Monday, June 18, 2018 2:03 PM  
**To:** Timmermann, Timothy <Timmermann.Timothy@epa.gov>; Musumeci, Grace <Musumeci.Grace@epa.gov>; Mitchell, Judy-Ann <Mitchell.Judy-Ann@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Rudnick, Barbara <Rudnick.Barbara@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Westlake, Kenneth <westlake.kenneth@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Tapp, Joshua <Tapp.Joshua@epa.gov>; Strobel, Philip <Strobel.Philip@epa.gov>; Schuller, Jennifer <Schuller.Jennifer@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>; Dunning, Connell <Dunning.Connell@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>

**Cc:** Hessert, Aimee <[Hessert.Aimee@epa.gov](mailto:Hessert.Aimee@epa.gov)>; Knight, Kelly <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>

**Subject:** For review by Friday COB -- Draft Implementation Plan for OFD

Hi Everyone,

I've attached a draft implementation plan for OFD that we provided to CEQ recently. The plan includes specific work and activities that we have already completed, and other activities that we are planning to undertake, to implement OFD.

Our final plan is due by early July.

Please send any comments by Friday COB.

Thanks

Laura

Laura Gentile  
Office of Policy  
U.S. EPA  
Desk 202-564-3158

Message

---

**From:** Goforth, Kathleen [Goforth.Kathleen@epa.gov]  
**Sent:** 6/21/2018 11:40:36 PM  
**To:** Ardillo, Anne [ARDILLO.ANNE@EPA.GOV]; R9-ENF-4-2 [R9-ENF-4-2@epa.gov]; Sachs, Carol [Sachs.Carol@epa.gov]  
**Subject:** RE: Section meeting notes - please edit or add if warranted

Anne –

Thanks for the great notes. A couple minor corrections re: the CEQ call:

**Ex. 5 Deliberative Process (DP)**

-Kathy

**Ex. 5 Deliberative Process (DP)**

---

**From:** Ardillo, Anne  
**Sent:** Thursday, June 21, 2018 2:45 PM  
**To:** R9-ENF-4-2 <R9-ENF-4-2@epa.gov>; Sachs, Carol <Sachs.Carol@epa.gov>  
**Subject:** Section meeting notes - please edit or add if warranted

Carolyn's poll results:

**Ex. 5 Deliberative Process (DP)**

Managers mtg (Connell)

- RA updates:

**Ex. 5 Deliberative Process (DP)**

for

CEQ federal NEPA contacts call

**Ex. 5 Deliberative Process (DP)**



- ## **Ex. 5 Deliberative Process (DP)**

If you have an idea for training please let Kathy and Connell know, we may have funds

## **Ex. 5 Deliberative Process (DP)**